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ABSTRACT

Part of a series of documents developed on Florida special education, the resource manual is intended to help local education agencies formulate and carry out due process procedures. Following a definition of terms and a brief historical perspective, the manual addresses the following topics (sample subtopics in parentheses): notice and consent (informed notice, the individual educational program, independent evaluations); mediation (qualifications of mediator, the mediation session); due process hearings (hearing rights, selection of hearing officers, prehearing and posthearing activities, appeals process); recordkeeping and data management (the working folder); and information to assist parents (attorneys, hearing officers, independent evaluations, advocacy). Included among five appendixes are sample notice and consent forms and forms dealing with mediation procedures. (CL)

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A RESOURCE MANUAL FOR THE DEVELOPMENT AND EVALUATION OF SPECIAL PROGRAMS FOR EXCEPTIONAL STUDENTS

VOLUME III-C

Mediation and Due Process Procedures

EC 162409

State of Florida
Department of Education
Tallahassee, Florida
Ralph D. Turlington, Commissioner
Affirmative action/equal opportunity employer

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This Resource Manual was developed by the Broward County Public Schools through a special project funded by the Florida Department of Education, under federal assistance provided by the Education for All Handicapped Children Act (P.L. 94-142). It is one in a series of publications developed to assist Florida school districts in the provision of special programs for exceptional students.

For additional information on this or other publications, contact the Clearinghouse/Information Center, Bureau of Education for Exceptional Students, Division of Public Schools, Florida Department of Education, Tallahassee, Florida, 32301.

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IMPLEMENTATION OF MEDIATION AND DUE PROCESS PROCEDURES

INTRODUCTION

Public Law 94-142 (P. L. 94-142), The Education for All Handicapped Children Act of 1975, requires each state to ensure that the rights of handicapped children and their parents are protected with respect to a free appropriate public education. States must include in their procedures provisions for an impartial due process hearing. A due process hearing provides a forum whereby the parents or the local education agency (LEA) may challenge decisions or actions related to the child's educational program.

This resource manual was developed to assist the LEA's in formulating their due process procedures and in preparing for and implementing mediation sessions and due process hearings.

The manual seeks to:

1) standardize mediation and due process procedures;
2) identify appropriate systematic data collection procedures; and
3) assist LEA's in conducting effective mediation sessions, thus avoiding costly due process hearings.

The content of this manual includes a historical perspective, an overview of notice and consent requirements, guidelines for the preparation of mediation sessions and due process hearings, information on record keeping and data management, and information to assist parents. Also included are forms and checklists, examples of correspondence used in mediation and hearings, legal documents, and resource and reference materials. Major emphasis is placed on the mediation process in the hope that the due process hearing procedure would be implemented only as a last resort.

The legal authority for the information included in this manual is derived from Public Law 94-142 and Florida State Board of Education Rules governing exceptional student education. In addition, information has been included from experiences at the local level of a large urban public school system, other states' experiences, and from fields other than exceptional student education which identified successful mediation techniques and existing procedures.

Through input from the Bureau of Education for Exceptional Students staff, field test participants, and a review committee, this manual was reviewed and revised. Though every effort was made to ensure that its content will be relevant and meaningful to each LEA, it is understood that the information provided in this manual will not fit all circumstances and may need to be adapted for specific cases.

HISTORICAL PERSPECTIVE

The right to education for exceptional students is based on the dual concepts of equal protection and due process of law. These concepts originated in the Fifth and Fourteenth Amendments of the United States Constitution. Due process of law relates to the principles and procedures which guarantee fair treatment and protect the rights of all individuals.

During the early years of the 1970's, the education of both handicapped and gifted students received extensive Congressional attention. This was largely due to a prevalence of right to education lawsuits. Prior to this time, exceptional students had limited opportunities and few guarantees of a public education. In addition, three major pieces of legislation were enacted guaranteeing several important "rights" to exceptional students.

The Rehabilitation Act of 1973, Section 504, is a piece of civil rights legislation which affected the education of exceptional students. The primary objectives of Section 504 applicable to preschool, elementary, and secondary education require LEA's to provide exceptional students with a "free appropriate education," educate exceptional students with nonexceptional students to the maximum extent possible, and establish procedural safeguards to allow parents/guardians to express opinions on the evaluation and placement of their children.

P. L. 93-380, The Education Amendments of 1974, required the provision of notice to parents and an opportunity for an impartial hearing prior to the change of any educational program for exceptional students.

Pressured by the demands of parents, advocacy groups, and the judiciary, Congress enacted Public Law 94-142, The Education for All Handicapped Children Act of 1975 (P. L. 94-142). This Act and the federal regulations covering its implementation represent a most comprehensive and far reaching statement of due process pertaining to exceptional students. P. L. 94-142, built upon previous legislation, is essentially an enabling statute which provides funds and outlines procedures to assist states in meeting their responsibilities for educating exceptional students.

DEFINITIONS OF TERMS

TERMINOLOGY

Bureau of Education for Exceptional Students (BEES)

The Bureau of Education for Exceptional Students (BEES) is part of the Division of Public Schools, Florida Department of Education, and serves all local school districts in the state.

Consent

Consent means that (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication, (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom, and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

District Procedures for Providing Special Programs for Exceptional Students

The District Procedures document is a written statement of procedures for providing an appropriate program of special instruction, facilities and services for exceptional students. These documents are submitted by each LEA for review and approval on a yearly basis to the Florida Department of Education. The Department of Education also uses the District Procedures document as a basis for periodic audits of programs serving exceptional students.

Division of Administrative Hearings (DOAH)

The Division of Administrative Hearings (DOAH) is an agency of the Department of Administration, and is responsible for conducting administrative hearings for many public agencies.

Education Records

The term "education records" means those records, files, documents, and other materials as defined in Section 228.093(2), Florida Statutes, which contain information directly related to a pupil or an adult student, which are maintained by an educational institution or by a person acting for such institution, and which are accessible to other professional personnel for purposes listed in Rule 6A-1.955(1), FAC.

Evaluation

Evaluation is the determination of a student's physical, mental, emotional, social or learning abilities, utilizing professional assessment, appraisal or diagnosis.

Exceptional Student

Exceptional students are those students enrolled in or eligible for enrollment in the public schools of a district, who require special classes, instruction, facilities or related services to take full advantage of or respond to educational opportunities. Exceptional students include both handicapped and gifted students.

Exceptional Student Programming

Part-time (PT) - Twelve hours or less per week in an exceptional student program.

Full-time (FT) - More than twelve hours per week in an exceptional student program.

Forty-Five (45) Day Time Requirement

The 45-day time requirement means that if a due process hearing has been requested, the hearing must be held and a decision rendered by a hearing officer not more than 45 days from the time the hearing request was received by the LEA. Both the parent and the LEA have the right to waive the 45-day time requirement.

Free Appropriate Public Education (FAPE)

Free Appropriate Public Education (FAPE) means special education and related services which (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with an individual educational program.

Grievance Coordinator

A grievance coordinator is a person who is capable of being impartial, coordinates and conducts mediation sessions, and prepares cases for due process hearings. Most often, this individual is employed by the LEA.

Individual Educational Program (IEP)

The term "individual educational program" (IEP) means a written statement for an exceptional student that is developed and implemented in accordance with State Board of Education Rules. In Florida, the term "individual educational plan" is used.

Informed Notice

Informed Notice means written notice which must be given to the parents of an exceptional child a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Independent Educational Evaluation

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

Least Restrictive Environment (LRE)

LRE means that to the maximum extent appropriate, exceptional students, including students in public or private institutions or other care facilities, are educated with students who are not handicapped and that special classes, separate schooling or other removal of exceptional students from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Local Education Agency (LEA)

The term "local education agency" means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools. Such a term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school. The term also includes intermediate educational units.

Mediation

Mediation is an intervening step either before or after a request for a due process hearing. It is an optional step and may not be used to deny or delay a party's right to a hearing. Mediation is used to promote reconciliation, compromise, and settlement between conflicting parties.

Mediator

A mediator is an impartial third party who seeks to clarify the objectives and positions of disagreeing parties, and assists the parties in reaching a mutually acceptable plan of action.

Parent

A parent means a parent, a guardian, a person acting as a parent of a student (such as a grandmother or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare) or a surrogate parent who has been appointed to act as a parent on behalf of a child.

Primary or Native Language

The term "primary or native language," when used with reference to a person of limited English speaking ability, means the language normally used by that person, or in the case of a student, the language normally used by the parents of the student.

Public Agency

Public agency includes the state educational agency, local educational agencies, intermediate educational units, and any other political subdivision of the state which are responsible for providing education to exceptional students.

Qualified

The term "qualified" means that a person has met state educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

Referral

Referral is the process whereby a parent or guardian, school personnel, or appropriate community agencies and professionals may request an evaluation of the abilities of a student.

Related Services

The term "related services" means those appropriate services, in addition to instruction, required by an exceptional student to benefit from special education. Related services may include but are not limited to diagnostic and evaluation services, psychological services, audiological services, job placement, school health services, food services, medical services for diagnostic or evaluation purposes, braillists, typists and readers for the blind, interpreters, specialized materials and equipment. Transportation is considered a related service when it is special transportation or transportation which the student would not normally receive.

Review

Review is a process whereby a multidisciplinary team meets at least annually, to review the objectives of the exceptional student's individual educational program and if appropriate revises its provisions.

Special Education

Special education is specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped or gifted child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

Staffing Committee

A staffing committee is a group of professional personnel which utilizes the process of reviewing diagnostic, evaluation, educational or social data and recommends student eligibility for special programs and recommends the student's educational placement.

State Education Agency (SEA)

State Education Agency (SEA) refers to a state department of education.

SECTION I - NOTICE AND CONSENT

OVERVIEW - NOTICE AND CONSENT REQUIREMENTS

The Education for All Handicapped Children Act (Public Law 94-142), the Family Education Rights and Privacy Act of 1974 (FERPA), Florida Statutes (FS) and State Board of Education Rules (SBER) all outline procedural safeguards that are designed to protect the rights of handicapped students and their parents. They attempt to ensure handicapped students the right to a free appropriate public education which includes special education and related services. In Florida, gifted students, as well as handicapped, are covered by these procedural safeguards.

The following information is intended to assist local education agencies (LEA'S) in complying with the notice and consent requirements which are referenced in both federal and state law. Expanded definitions, as well as suggested procedures for implementation, are provided. These suggested procedures may need to be modified in accordance with policies outlined in the District Procedures document of each LEA.

NOTICE OF PROCEDURAL SAFEGUARDS

AUTHORITY

SBER: 6A-6.331 6A-1.955
6A-6.332

CFR: 121a.500 - 121a.514

The LEA must provide a full explanation of all the procedural safeguards available to parents.

The LEA must inform parents of all of their procedural safeguards. LEA's must take whatever action is necessary to ensure that parents are informed and understand these safeguards. The procedural safeguards must be written in language understandable to the general public. They must be offered to the parents in their primary or native language. If the parents cannot read or write or have a handicap, then the LEA must, in addition, provide the information orally or in any other way understood by the parents (e.g., braille, signing). Documentation needs to be maintained indicating how the procedural safeguards were given to the parents.

Information regarding procedural safeguards may be disseminated by including them in the District Procedures document, through brochures, pamphlets, newsletters, and the public media, and through parent training. They may also be included on the reverse side of frequently used exceptional student education forms or attached to forms.

The following list is often used on school district forms to provide parents with an explanation of their procedural safeguards.

Appendix I-1a

PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF EXCEPTIONAL STUDENTS

It is very important for you to understand that you have the following rights:

1. You may examine all records related to the referral, identification, evaluation or educational placement of your child. You are also entitled to:

   a) explanations and interpretations of the records,
   b) copies of the records. Fees for copies must be based upon the cost of reproduction.
   c) seek correction of your child's records if you believe they are not accurate,
   d) give consent prior to the disclosure of certain information,
   e) request a hearing if you and the school district cannot reach agreement regarding the information in your child's records. (The contact person is specified in the district's procedures on Student Records)

2. You may request and obtain an independent evaluation.

   a. The evaluation will be public expense if:

      (i) You disagree with an evaluation obtained by the school district. However, the school district may request a hearing to show that its evaluation is appropriate. If the hearing officer rules in your favor, the school district will pay for the evaluation.

      (ii) A hearing officer conducting a hearing related to any action taken by the school district concerning special education requests an independent evaluation.

      NOTE: If the local school district agrees to pay for an independent evaluation, criteria used for obtaining the evaluation must be the same as those used by the district when it initiates an evaluation.

   b. The evaluation will be at the parent's expense if:

      (i) The parent voluntarily assumes the cost.

      (ii) The parent disagrees with the school's evaluation, and an impartial hearing officer decides in favor of the school district.

3. If you pay for an independent evaluation, you have the choice to introduce the evaluation for consideration by the school system or at a hearing. In both cases, if you choose to offer the evaluation, it must be considered in decisions regarding your child.

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4. You may refuse to agree to the pre-placement evaluation. In this case, the school district may request a hearing to settle the disagreement.

5. You may refuse to agree to a school district's proposed placement or a refusal to place your child in an exceptional education program. In this case, the school district may request a hearing to settle this disagreement.

6. You may withdraw your agreement to allow an evaluation or placement at anytime.

7. You will be notified of any other action the school district proposes to take regarding further identification, evaluation, change of placement, or provision of an education for your child.

8. Should you and the school district be unable to reach an agreement regarding the proposed identification, evaluation, placement or provision of an education for your child, both you and the school district have the following rights:

    (a) To request an impartial due process hearing, with the results of that hearing mailed to you within forty-five (45) days after the receipt of that request. Request for a hearing is made to the (Superintendent) in writing.

    (b) To have the hearing conducted by an impartial hearing officer. The impartial hearing officer will not be an employee of the local school district nor will he/she have a personal or professional interest in the outcome of the hearing.

    (c) To be accompanied and advised by an attorney or other individuals with special knowledge of exceptional children.

    (d) To present evidence, or to prevent the introduction of evidence that has not been provided to the other party at least five (5) days prior to the hearing.

    (e) To question and require the attendance of witnesses.

    (f) To obtain a written or taped record of the hearing.

    (g) To obtain the written findings and the decision of the hearing officer.

9. In addition to the rights above, you have the following rights regarding hearings:

    (a) To have your child present.

    (b) To open the hearing to the public upon request; the hearing will be closed to the public unless you request that it be open.

    (c) To receive from the school district information about free or low-cost legal and other appropriate services. This information will be provided to you if you ask, or if a hearing is requested by either you or the school district.

10. You may appeal the decision of the hearing officer within ten days to the Commissioner of Education for review. You will be given a decision within thirty (30) days of the request for a state level review.

11. You may appeal the decision of the Commissioner of Education to the Courts.

12. Your child will remain in his present program during all hearings and appeals, unless you and the school district agree to another placement. If your child is not attending school, you may agree to place him/her in a public school program until all hearings are completed.

13. An individual will be assigned to act as a surrogate parent to represent your child in providing an education if:

    a. the child is a ward of the state,
    b. no parent/guardian can be identified,
    c. no parent/guardian can be located.

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INFORMED NOTICE

AUTHORITY

SBER: 6A-6.331

CFR: 121a.504
121a.505

Written notice must be given to the parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

The LEA must inform parents of any proposed action through the process known as informed notice. Informed notice must be given to parents during the process of identifying a student as exceptional and providing services. The content of the notice may differ according to the proposed action. LEA's must take whatever action is necessary to ensure that parents understand the proposed action. The informed notice must be written and it must be offered to the parents in their primary or native language. If the parents cannot read or write or have a handicap, then the LEA must, in addition, provide the information orally or in any other way understood by the parents (e.g., braille, signing). Documentation needs to be maintained indicating how the informed notice was given to parents.

Providing parents with a series of informed notices enables them to understand and exercise their rights, to participate in the process by working in collaboration with school personnel, and to be part of the decision-making process.

The content of informed notice must include but is not limited to:

a) a full explanation of all of the procedural safeguards available to the parents

b) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected

c) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal

d) a description of any other factors which are relevant to the agency's proposal or refusal

As best practice, the LEA may want to include the name of a contact person to answer any questions the parents may have and explain any options they may have (e.g., examine education records, refuse consent, ask for an independent evaluation, visit an exceptional education classroom, etc.). This may be done by personal conference or by telephone.

The most frequently occurring situations requiring written informed notice are:

a) following a staffing recommendation of ineligibility

b) prior to re-evaluation (required at least every three years)

c) prior to any changes in the special program after initial placement (e.g., dismissal from the special program, a change from part-time to full-time program)

Written informed notice may be given to the parents at the time of a conference, or it may be sent by regular or certified mail, or hand carried by school personnel or the student.

CONSENT

AUTHORITY

SBER:	6A-6.331	Parental consent must be obtained before preplacement evaluation and initial placement in a special education program.
CFR:	121a.500 121a.504	

Consent means that (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication, (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom, and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Parent consent is required in the following situations:

a) prior to the preplacement evaluation

b) prior to initial placement in a special program

Obtaining written consent:

The consent form must be combined with the form used for informed notice. The form may be hand-delivered or mailed to the parents. An option may be included on the form to allow parents to request a conference to discuss the proposal, as well as the name, address, and telephone number of a contact person. Parents should always be given a sufficient amount of time (approximately 10 working days) to consider the proposed action. It would also be helpful to provide a copy to the parents for their own records.

If the parents refuse to give their consent, the LEA may request a due process hearing. Should an impartial hearing officer decide in favor of the LEA, parental consent is not required to implement the proposed action.

NOTICE AND CONSENT FOR EVALUATION

AUTHORITY

SBER: 6A-6.331

CFR: 121a.500-05

The LEA must send prior written notice to parents regarding any proposed individual evaluation of their child. Parental consent must be obtained prior to initial formal, individual evaluation.

Evaluation is the determination of a student's physical, mental, emotional, social or learning abilities, utilizing professional assessment, appraisal or diagnosis.

Each test used in an evaluation must be given in the student's primary or native language and must not be racially or culturally discriminatory. Tests and other evaluation materials should be validated for the specific purpose for which they are used and should be administered by trained personnel in conformance with the instructions provided by their producers. Tests must accurately measure what they are supposed to measure and not penalize a student because of a disability, e.g., inability to write with a pencil. The student should be assessed in all areas related to the suspected exceptionality, including as appropriate:

a) general intelligence
b) preacademic or academic performance
c) sensory functioning (vision, hearing, etc.)
d) speech and language development
e) social and emotional status
f) motor abilities
g) health status

No single procedure may be used as the sole criterion for determining an appropriate educational program for the student. An evaluation must be conducted by a multi-disciplinary team or group of persons, including at least one teacher or evaluation specialist with special knowledge in the area of the student's suspected exceptionality.

Evaluation is an integral step in the process of determining the educational needs of students. Written evaluation reports should translate evaluation data into specific instructional needs and provide the data base upon which staffing committees make decisions about what educational services best meet the student's needs. The LEA should involve the parents in the evaluation process by answering their questions (a pre-evaluation conference is suggested), gathering helpful information, and providing interpretations to parents as needed.

The content of a notice of formal individual evaluation must include:

a) the proposed action

b) the purpose for the evaluation

c) any test records and reports that indicate the need for an individual evaluation

d) what evaluation procedures will be used, if they are known in advance

e) the procedural safeguards afforded to the parents

As best practice, the LEA may want to highlight the specific procedural safeguards that relate to the evaluations, have direct or telephone contact with the parents, and include the name, address, and telephone number of a contact person on the written notice.

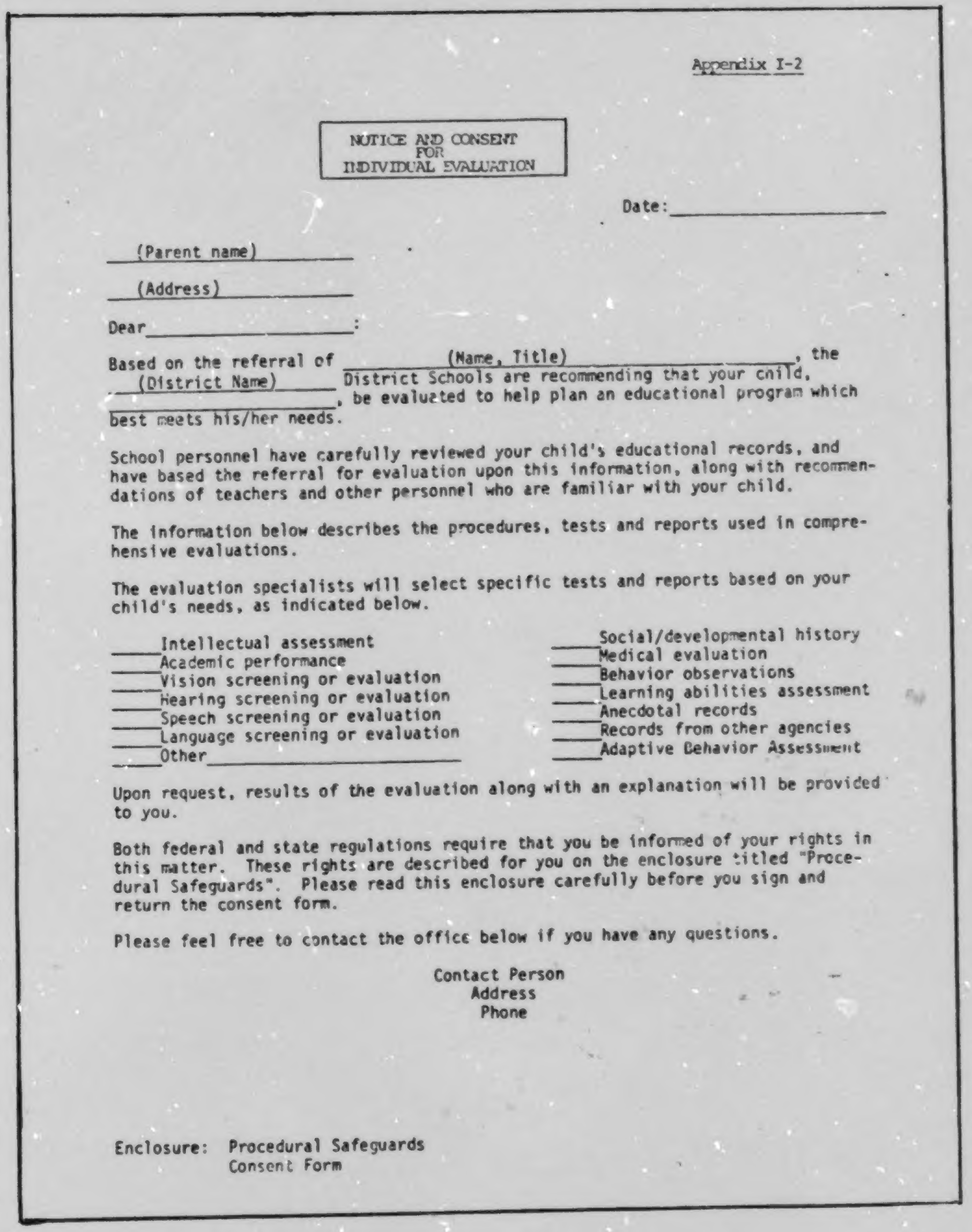
Obtaining consent for evaluation:

Written consent for evaluation is required prior to conducting an initial evaluation of a student. The evaluation process may identify additional areas which need to be evaluated. Parental consent must be obtained prior to evaluating those areas.

As best practice, LEA's should be sure that the parents are fully informed by carefully describing evaluation procedures and communicating information about evaluation instruments in understandable language prior to requesting consent.

If the parents refuse to give their consent for an initial evaluation, the LEA may request a due process hearing to determine the need for an evaluation. If the hearing officer rules in favor of the LEA, an evaluation may proceed without parental consent. If the hearing officer overrules the LEA, the student may not be evaluated. Either party may appeal the hearing officer's decision to the Commissioner of Education.

The following is an example of a form letter which provides informed notice and consent for formal individual evaluation.



Appendix I-2

NOTICE AND CONSENT FOR INDIVIDUAL EVALUATION

Date:____________________

(Parent name)____________

(Address)______________

Dear____________________:

Based on the referral of __________(Name, Title)__________, the (District Name)______ District Schools are recommending that your child, ______________, be evaluated to help plan an educational program which best meets his/her needs.

School personnel have carefully reviewed your child's educational records, and have based the referral for evaluation upon this information, along with recommendations of teachers and other personnel who are familiar with your child.

The information below describes the procedures, tests and reports used in comprehensive evaluations.

The evaluation specialists will select specific tests and reports based on your child's needs, as indicated below.

_____Intellectual assessment
_____Academic performance
_____Vision screening or evaluation
_____Hearing screening or evaluation
_____Speech screening or evaluation
_____Language screening or evaluation
_____Other____________________

_____Social/developmental history
_____Medical evaluation
_____Behavior observations
_____Learning abilities assessment
_____Anecdotal records
_____Records from other agencies
_____Adaptive Behavior Assessment

Upon request, results of the evaluation along with an explanation will be provided to you.

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you on the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before you sign and return the consent form.

Please feel free to contact the office below if you have any questions.

Contact Person
Address
Phone

Enclosure: Procedural Safeguards
Consent Form

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Appendix I-2a

Please sign and return this consent form to:

Contact Person
Address
Phone

I have read and understand my rights in regard to the proposed evaluation.

_____I give my permission for testing.

_____I do not give my permission for testing.

_____I request a conference to discuss this evaluation before granting permission.

____
Parent Signature

____
Date

____
Child's Name

____
Date of Birth

Enclosure: Procedural Safeguards

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NOTICE OF INELIGIBILITY

AUTHORITY

SBER: 6A-6.331

CFR: 121a.500
121a.504
121a.505

Written notice must be given to the parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

Based upon evaluation data, a staffing committee may determine that the student is ineligible for an exceptional education program. The committee should address alternatives that may assist the student in achieving success within another educational program. *Written informed notice that the student is ineligible for an exceptional education program must be provided to the parents.*

The content of a notice of staffing recommendation (for ineligibility) must include:

a) a full explanation of all of the procedural safeguards available to the parents

b) a description of the action proposed or refused by the agency, an explanation of why the agency proposed or refused to take the action, and a description of any options the agency considered and the reasons why those options were rejected

c) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal

d) a description of any other factors which are relevant to the agency's proposal or refusal

The parent may challenge the LEA's refusal to determine the student eligible. Should this challenge result in an impartial due process hearing, the hearing officer's decision is final unless an appeal is made to the Commissioner of Education.

Appendix I-3a

NOTICE OF INELIGIBILITY

Date:______________

__(Parent name)_______
__(Address)________

Dear Mr. and Mrs.______________:

On ___(date)______, an eligibility staffing was held to review your child's educational needs. This document has been prepared to assist in explaining to you the findings and recommendations of the staffing committee.

The committee members concluded that your child ____________, is not eligible for educational assignment to a special program.

The committee members based their findings upon written reports of the following evaluations.

Name of tests, procedures or reports:	Description:
(Wechsler Intelligence Scale for Children-Revised)	(an individual test of general intelligence)
________________	________________
________________	________________

To meet you child's educational needs, the committee considered the following options and has recommended the following placement at _(name)___school.

____a. basic class________________________
____b. basic class with supplementary consultation or special education services:
____c. basic class supplemented by itinerant instruction or a resource room;
____d. special class-either full-time or part-time in a regular school;
____e. special day school;
____f. non-public residential or day school through a contractual arrangement;
____g. special class in a hospital or treatment center;
____h. individual instruction in a hospital or home setting;
____i. public residential school;
____j. other____________________________.

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The other options were rejected because they:

____ did not provide the least restrictive environment for your child;
____ did not provide the amount of individual or small group instruction required by your child;
____ other, specify____
____

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you in the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before signing and returning the consent form.

Please feel free to contact the office below if you have any questions:

Contact Person
Address
Phone

Enclosure: Procedural Safeguards

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THE INDIVIDUAL EDUCATIONAL PROGRAM (IEP)

AUTHORITY

SBER: 6A-6.331
CFR: 121a.340-349

Each LEA shall develop an individual educational plan for each exceptional student.

Based upon evaluation and other pertinent data, a staffing committee must determine whether a student is eligible to receive special education and related services. After program eligibility is determined, the committee must develop an individual educational program (IEP) for the student.

IEP meetings must include a representative of the LEA, other than the student's teacher, who is qualified to provide or supervise the provision of special education, the student's teacher, one or both of the student's parents, the student when appropriate, and other individuals at the discretion of the parents or LEA. In addition, for an exceptional student who has been evaluated for the first time, a member of the evaluation team or some other person who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation must be present at the meeting.

The content of notice inviting parents to an IEP meeting to develop, review, or revise an IEP must include:

a) the purpose of the meeting

b) participants, by name and title or simply title

c) the date, time, and place of the meeting

As best practice, the LEA should include a statement that the parents may bring a person to assist them at the meeting and the name and telephone number of a contact person. A response form may be a part of the notice which may be removed and returned, or it may be a separate form.

The LEA must make every effort to ensure the attendance and participation of the parents. The LEA must:

a) notify parents of the meeting early enough to ensure that they will have an opportunity to attend

b) schedule the meeting at a mutually agreed upon time and place

c) use other methods to ensure parent participation if neither parent can attend the IEP meeting

d) arrange for an interpreter for parents who are deaf or for communication in the language commonly used by the parents

e) give the parent, on request, a copy of the individual educational program

The LEA must document attempts to obtain parent participation. This documentation should include the following:

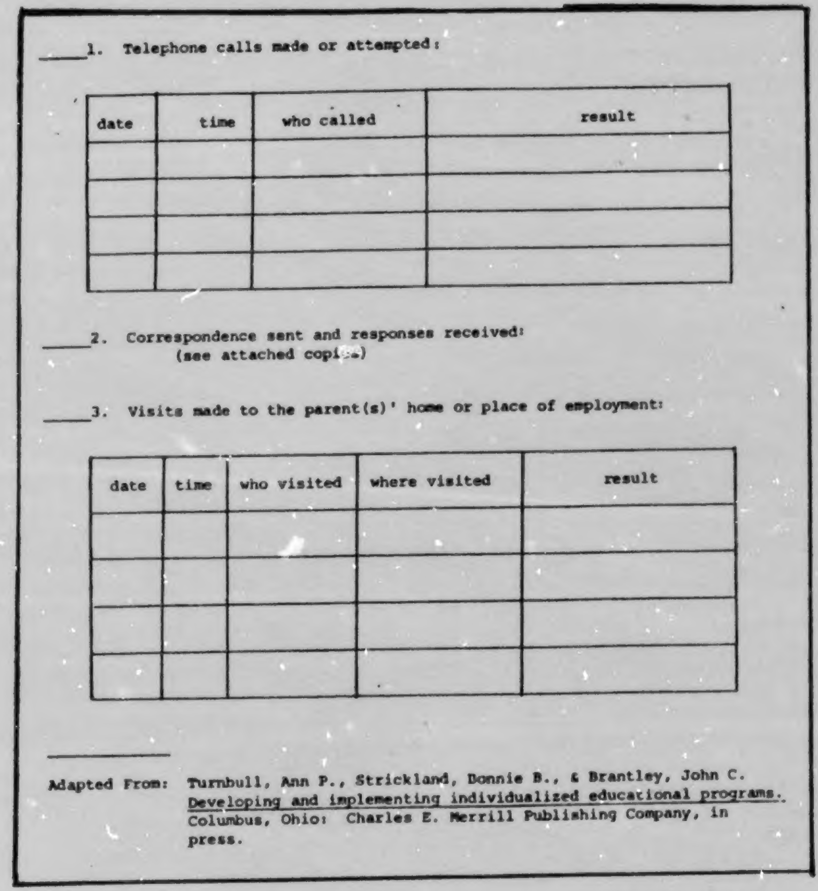
a) records of telephone calls made and the results of those calls

b) copies of correspondence sent to the parents and any responses received

c) detailed records of visits made to the parents' home or place of employment and the results of these visits

All documentation should be signed and dated with the day, month and year clearly specified.

The following is an example of a format for documenting attempts to obtain parent participation:



____1. Telephone calls made or attempted:

date	time	who called	result

____2. Correspondence sent and responses received:
(see attached copies)

____3. Visits made to the parent(s)' home or place of employment:

date	time	who visited	where visited	result

Adapted From: Turnbull, Ann P., Strickland, Donnie B., & Brantley, John C. Developing and implementing individualized educational programs. Columbus, Ohio: Charles E. Merrill Publishing Company, in press.

Appendix I-4

PARENT NOTICE OF A MEETING TO DEVELOP/REVIEW AN INDIVIDUAL EDUCATIONAL PLAN

Date:________________

____(Parent Name)____________

____(Address)_______________

A meeting has been scheduled to_____develop,_____review the individual educational plan for your child,___________________. We feel it is important for you to attend this meeting and to have an opportunity to help us plan a program which meets your child's special needs.

The following people will be at this meeting:

_______________________ (name,title)

_______________________ (name,title)

____

____

Please return the lower portion of this letter as soon as possible. If the time or place of the meeting is inconvenient for you, please let us know by ____(date)________.

If you have any questions, please contact the office below.

Scheduled Meeting:

Time:________________

Place:________________

Date:________________

________________ Name

________________ Address

________________ Phone

- -

Student Name_______________________

Scheduled Meeting:

Time:________________

Place:________________

Date:________________

Check One:

____Yes, I will attend.

____No, I cannot attend the scheduled meeting; please contact me to make more convenient arrangements.

________________ Parent Signature

________________ Phone

________________ Date

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PARENT NOTICE OF STAFFING AND DEVELOPMENT OF AN INDIVIDUAL EDUCATIONAL PLAN

Date:____________

__(Parent name)__
__(Address)______

Dear________________:

A meeting has been scheduled to discuss the results of __(child's name)__ recent evaluation. We will consider the most appropriate educational placement and develop an individual educational plan for your child at this meeting. Any placement of your child in an exceptional program will be based on careful study and will occur only after your knowledge and written permission. We feel it is important for you to attend this meeting and have an opportunity to help us plan the educational goals for your child.

The following people will be at this meeting:

____________________ (name, title)	____________________ (name, title)
____________________	____________________

Please return the lower protion of this letter as soon as possible. If the time or place of the meeting is inconvenient for you, please let us know by___(date)_______. If you have any questions, please contact the office below.

Scheduled Meeting:	________________ Name
Time:________________	________________ Address
Place:________________	________________ Phone
Date:________________	

- -

Student Name________________	Scheduled Meeting:
Check One:	Time:________________
	Place________________
____Yes, I will attend.	Date:________________

____No, I cannot attend the scheduled meeting. Please contact me to make more convenient arrangements.

____________ Date	____________________ Parent signature	____________ Telephone

Appendix I-6a

PARENT NOTICE OF STAFFING AND DEVELOPMENT OF AN INDIVIDUAL EDUCATIONAL PLAN

Date:______________

____(Parent name)__________

____(Address)__________

Dear______________________:

A meeting has been scheduled to discuss the results of__(child's name)______ recent evaluation. We will consider the most appropriate educational placement and develop an individual educational plan for your child at this meeting. Any placement of your child in an exceptional education program will be based on careful study and will occur only after your knowledge and written permission. We feel it is important for you to attend this meeting and have an opportunity to help us plan the educational goals for your child.

The following people will be invited to this meeting:

____________________________ (name, title) ____________________________	____________________________ (name, title) ____________________________

If you would like to bring someone to the meeting with you, please feel free to do so.

Please return the reply form which is attached to this letter by__(date)____.

Scheduled Meeting:

Date:______________________	____(Contact Person)__________
Time:______________________	____(Address)__________
Place______________________	____(Phone)__________

Appendix I-6b

REPLY FORM

Scheduled Meeting:

Date:____________________

Time:____________________

Place:____________________

Student Name:________________

____Staffing and IEP

____IEP

Please check the appropriate responses and return to the office below.

____Yes, I will attend the scheduled meeting.

____Please contact me to arrange a more convenient meeting.

____I do not plan to attend the meeting, but request a telephone conference to discuss the results of the meeting.

____I do not pland to attend the meeting. Please send me a copy of the individual educational plan.

____I plan to bring someone to the meeting. (Please list)________________

____

____
(Parent Signature)

____
(Telephone)

NOTICE AND CONSENT FOR PLACEMENT

AUTHORITY

SBER: 6A-6.331(7)

CFR: 121a.500-505

The LEA must obtain informed parental consent prior to placement into a special program for exceptional students.

After a staffing committee has decided on an appropriate individual educational program for the student, the parents must be provided with written informed notice of the proposed placement whether or not they are in attendance at the meeting, and their consent must be obtained.

The content of a notice of placement must include but is not limited to:

a) a full explanation of all of the procedural safeguards available to the parents

b) a description of the action proposed by the agency, an explanation of why the agency proposes to take the action, and a description of any options the agency considered and the reasons why those options were rejected

c) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal

d) a description of any other factors which are relevant to the agency's proposal or refusal

Appendix I-7a

NOTICE AND CONSENT FOR PLACEMENT

Date:__________

(Parent name)

(Address)

Dear Mr. and Mrs.____________:

On ___(date)___, an eligibility staffing was held to review your child's educational needs. This document has been prepared to assist in explaining to you the findings and recommendations of the staffing committee.

The committee members concluded that your child,________________, is eligible for educational assignment in a special program for (exceptionality) students.

The committee members based their findings upon written reports of the following evaluations:

Name of Test, procedures or reports:	Description:
(Wechsler Intelligence Scale for Children-Revised)	(an individual test of general intelligence)
______________________	______________________
______________________	______________________
______________________	______________________

To meet your child's educational needs, the committee considered the following options and has recommended the following placement at (name) school.

___a. basic class____________________________________
___b. basic class with supplementary consultation or special education services.
___c. basic class supplemented by itinerant instruction or a resource room.
___d. special class either full-time or part-time in a regular school;
___e. special day school;
___f. non-public residential or day school through a contractual arrangement;
___g. special class in a hospital or treatment center:
___h. individual instruction in a hospital of home setting;
___i. public residential school;
___j. other____

The other options were rejected because they:

____did not provide the least restrictive environment for your child;

____did not provide the amount of individual or small group instruction required by your child:

____other, specify____

____

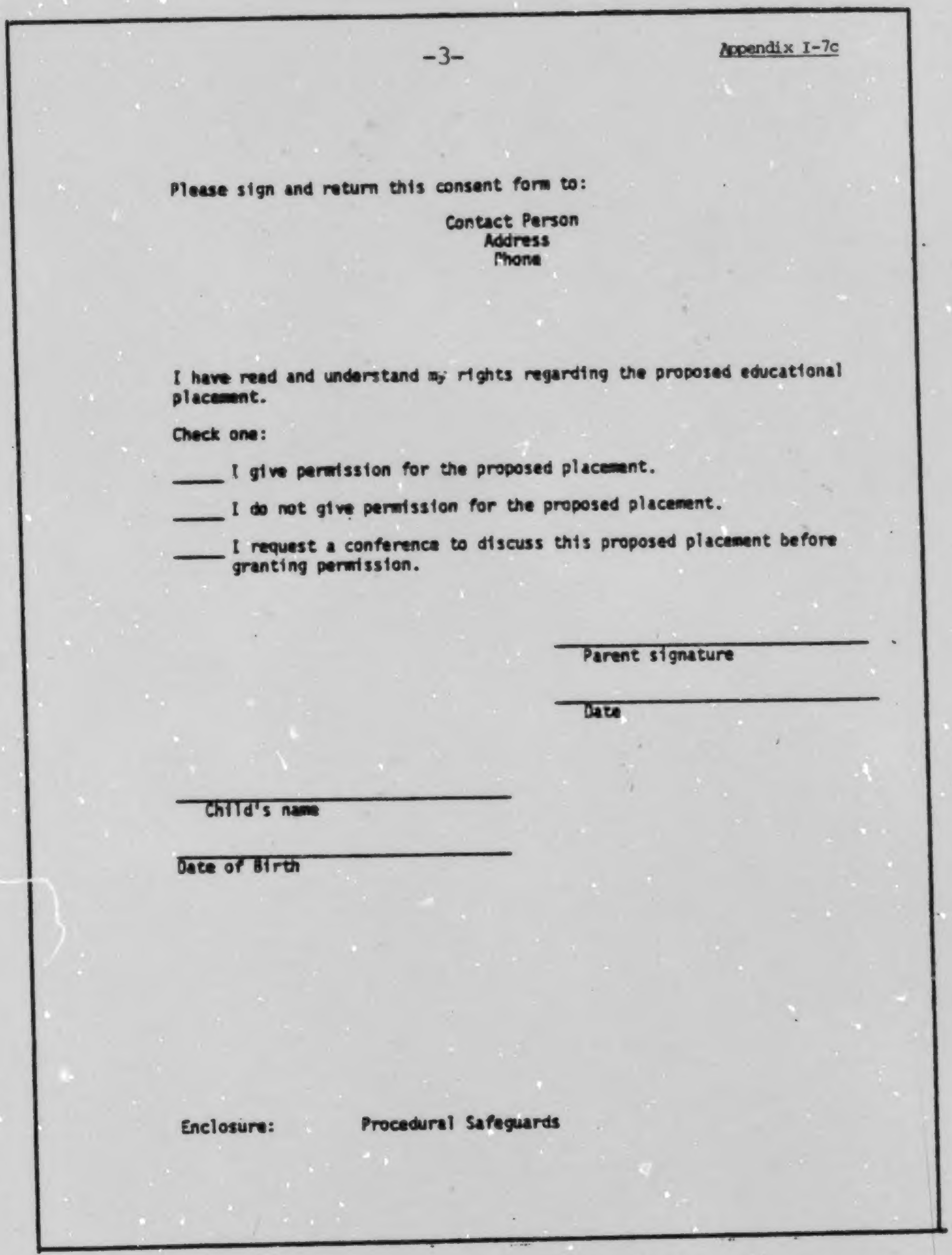
Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you in the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before signing and returning the consent form.

Please feel free to contact the office below if your have any questions;

Contact Person
Address
Phone

Enclosure: Precedural Safeguards
Consent Form

The following is an example of a consent for placement:



-3-

Appendix I-7c

Please sign and return this consent form to:

Contact Person
Address
Phone

I have read and understand my rights regarding the proposed educational placement.

Check one:

____ I give permission for the proposed placement.

____ I do not give permission for the proposed placement.

____ I request a conference to discuss this proposed placement before granting permission.

____
Parent signature

____
Date

____
Child's name

____
Date of Birth

Enclosure: Procedural Safeguards

NOTICE OF RE-EVALUATION

AUTHORITY		
SBER:	6A-6.331	The LEA must provide a re-evaluation of each exceptional student at least every three years, or more frequently if conditions warrant.
CFR:	121a.500-505	

The LEA must provide a re-evaluation of each exceptional student at least every three years, or more frequently if conditions warrant. Parents must receive written informed notice. Consent is not required in order to conduct a re-evaluation.

The content of a notice of formal individual re-evaluation must include but is not limited to:

a) a full explanation of all of the procedural safeguards available to the parents

b) a description of the action proposed or refused by the agency, an explanation of why the agency proposed or refused to take the action, and a description of any options the agency considered and the reasons why those options were rejected

c) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal

d) a description of any other factors which are relevant to the agency's proposal or refusal

The following is an example of a notice of formal individual re-evaluation.

NOTICE OF FORMAL INDIVIDUAL RE-EVALUATION

Appendix I-8

Date: ____________________

(Parent name)
(Address)

Dear ________________:

Based on the referral of ______(Name, Title)______, the (District name) District Schools are recommending that your child, ________________, be re-evaluated to help plan an educational program which best meets his/her needs.

School personnel have carefully reviewed your child's educational records, and have based the referral for re-evaluation upon this information, along with recommendations of teachers and other personnel who are familiar with your child.

The information below describes those procedures, tests and reports used in comprehensive evaluations.

The evaluation specialists will select specific tests and reports based on your child's needs, as specified below.

___ Intellectual ability
___ Academic Achievement
___ Vision screening or evaluation
___ Hearing screening or evaluation
___ Speech screening or evaluation
___ Language screening or evaluation
___ Other ____________________

___ Social/developmental history
___ Medical evaluation
___ Behavior observations
___ Learning abilities
___ Anecdotal records
___ Records from other agencies
___ Adaptive Behavior Assessment

Upon request, results of the evaluation and an explanation will be provided to you.

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you on the enclosure titled "Procedural Safeguards." Please read this enclosure carefully.

Please feel free to contact the office below if you have any questions.

Contact Person
Address
Phone

Enclosure: Procedural Safeguards

Situations Requiring Notice and/or Consent

	Notice Only	Consent with Notice
proposal for formal individual evaluation		X
refusal to provide individual evaluation	X	
student is not eligible for special education	X	
meeting scheduled to develop, revise, or review IEP	X	
LEA proposes special program placement		X
re-evaluation	X	
change from full-time to part-time - or PT to FT	X	
change from one special education program to another (E.H. to SLD)		X
dismissal from an exceptional student program	X	

INDEPENDENT EVALUATION

AUTHORITY

SBER: 6A-6.331
CFR: 121a.503

Parents of an exceptional child have the right to obtain an independent evaluation.

An independent educational evaluation is an evaluation conducted by a qualified examiner who is not an employee of the LEA. Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by the school district, provided, however, the school district may initiate a due process hearing to show that its evaluation is appropriate and if the final decision is that the district evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense. Whenever an independent evaluation is at school board expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria prescribed by State Board rules for use by the school district when it initiates an evaluation.

Parents may, at any time, secure an independent evaluation of their child from qualified professionals of their choice, at their own expense. If the parents choose to share this evaluation with the LEA or in a hearing, then the evaluation data must be considered in any decision made regarding the provision of educational services to the student.

Upon request, *the LEA must tell the parents where they may obtain an independent evaluation.* A list of independent evaluators should be maintained by the LEA. Evaluation specialists include persons such as physicians, psychologists, audiologists, and social workers with each person licensed or certificated to practice their profession in Florida. Educational evaluators not covered by a license or certificate must either hold a valid Florida teacher's certificate or must be employed under the provisions of State Board of Education Rule 6A-1.502, FAC.

The cost of an independent evaluation will be at public expense when:

a) the parents disagree with the LEA's evaluation and the LEA, believing its evaluation is appropriate, initiates a due process hearing, and the hearing officer's decision is in favor of the parents

b) the LEA voluntarily assumes the responsibility for payment

c) the hearing officer requests one at his/her discretion

The cost of an independent evaluation will be at the parents' expense when:

a) they voluntarily assume the expense

b) they request it, the LEA initiates a hearing because they believe their evaluation is appropriate, and the hearing officer's decision is in favor of the LEA

SECTION II - MEDIATION

OVERVIEW OF MEDIATION

The implementing regulations of Public Law 94-142 address mediation in the following manner:

> *Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of state educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart. (Education of the Handicapped Act, Part B. 121a.506. Impartial hearing. Comment.)*

A due process hearing is a lengthy, time-consuming and expensive proceeding. The financial burden is carried primarily by the public agency. Costs may be incurred for transcripts, expert witnesses, legal counsel, staff time, etc. There are also more subtle costs to those involved--anxiety, emotional stress, and frustration.

The intent of mediation is to aid in resolving differences, clarifying issues, and allowing compromise to be reached between the parents and the local education agency (LEA). In effect, mediation can save both parties time and financial expense. It must be noted that although mediation also involves costs of time and/or money to the parents and the LEA, it is not as costly, time-consuming, or stressful as a due process hearing.

Mediation is more formal than a school conference or staffing but is less formal than a hearing. Its goal is to ensure that the student, upon whom the differences of opinion are focused, will receive an educational program suited to his/her unique and special needs.

Mediation may be offered whenever there is disagreement between the parents and the LEA. If a due process hearing has been requested, mediation may be offered to the parents but it cannot disrupt or delay the hearing. The LEA may not pressure parents to participate in any meeting, conciliatory conference, or review prior to a hearing.

Mediation sessions are conducted by an impartial third person called a mediator. Persons who might serve as mediators are Superintendents, Exceptional Student Education (ESE) Directors or their designees, Grievance Coordinators, LEA Attorneys, or other appropriate persons.

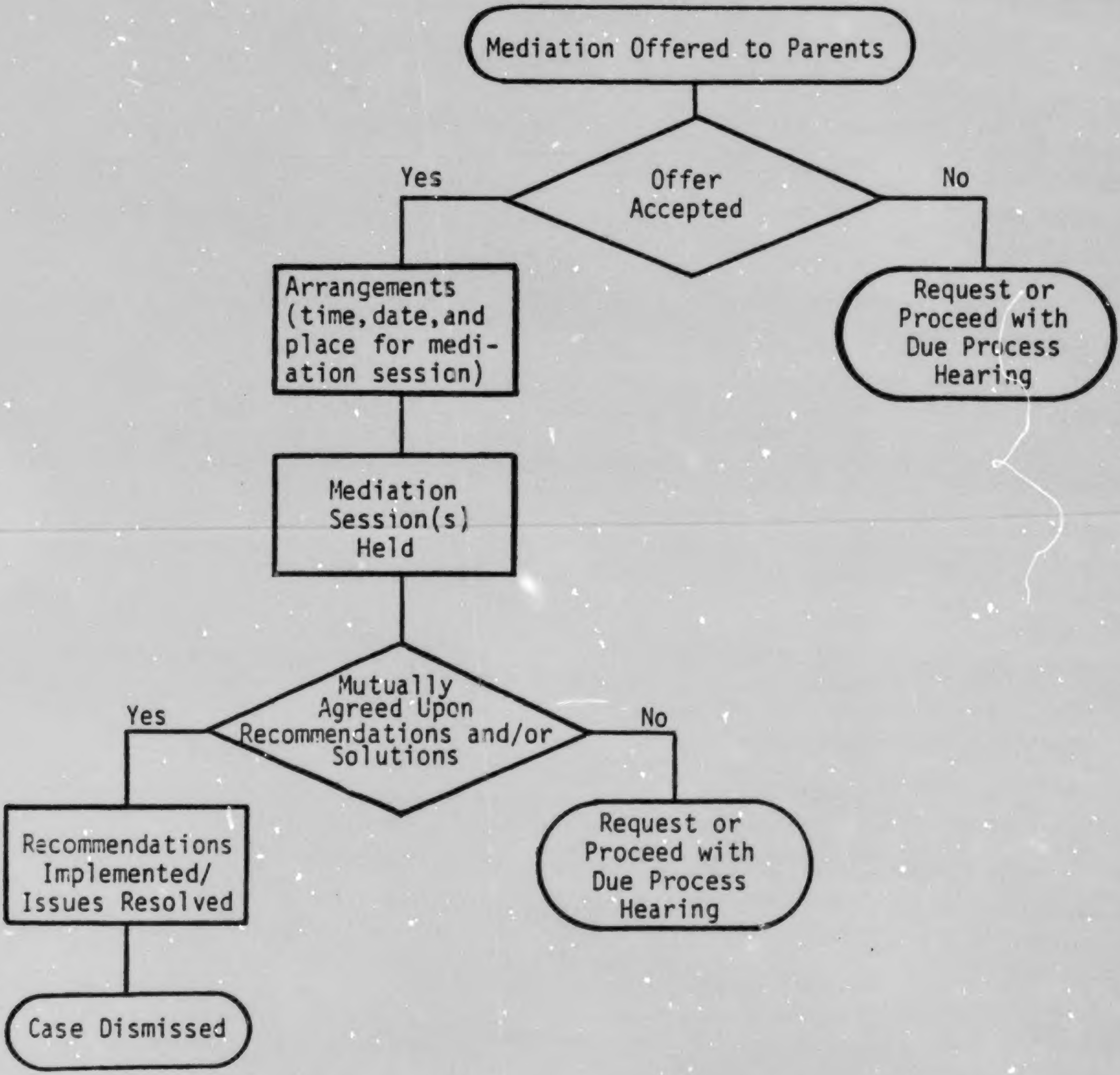
LEA's will find it helpful to provide information about the benefits of mediation to the parent who has requested or is considering requesting a due process hearing. Even if the mediation session does not result in mutually agreed upon solutions, it may help to clarify and narrow the issues which will be resolved by a hearing officer.

The following information is designed to assist LEA's in preparing for a mediation session. These procedures are presented as guidelines flexible enough to be adapted and modified to meet individual needs.

The forms, letters, correspondence, and documents in this section are all referenced to mediation in conjunction with a due process hearing. Since mediation can occur prior to requests for hearings, the sample form letters and correspondence may be used, omitting all reference to a due process hearing.

EVENTS IN THE MEDIATION PROCESS

The following chart depicts the sequence of events in the mediation process.


Mediation Offered to Parents
Offer Accepted
Yes
No
Arrangements (time, date, and place for mediation session)
Request or Proceed with Due Process Hearing
Mediation Session(s) Held
Mutually Agreed Upon Recommendations and/or Solutions
Yes
No
Recommendations Implemented/ Issues Resolved
Request or Proceed with Due Process Hearing
Case Dismissed

If mediation is offered as an interim step in the due process proceedings, the parents have the option to waive the 45-day time requirement. If the parents wish to mediate but choose not to waive the 45-day requirement, then mediation must take place within the 45 days.

THE MEDIATION OFFER

The Offer

Mediation may occur at any administrative level within the LEA. Mediation may be offered to the parents as a result of a hearing request or whenever the LEA and parents find themselves in disagreement about some aspect of a student's education program.

It is the LEA's responsibility to make parents aware of the availability of mediation. Parents need to understand that the procedural safeguards afforded to them also apply in mediation.

If the mediation offer is prompted by a hearing request, the request must first be processed (refer to Hearing Section). LEA's may choose to ask the parents to waive the 45-day time limitation. Waiving the requirement provides additional time to mediate, resolve issues, and implement recommendations. It should be noted that the parents may not be required to waive the time requirement. In those cases when parents wish to mediate but choose not to consent to the waiver, mediation must occur within the 45-day time limit. If the mediation offer is not accepted, then proceed with the hearing. The Division of Administrative Hearings must be informed of any agreements to waive the time requirement.

Parents should be encouraged to bring any individual or information to mediation sessions. Attorneys, legal aid, and child advocacy organizations can be very helpful in the mediation process. Most often, attorneys and agencies are more aware than parents of the length and cost of a formal hearing. They understand the law, its requirements, and the process; and may be instrumental in encouraging parents to accept mediation decisions. Furthermore, they are not personally involved and, therefore, can be more objective.

The most effective method for offering mediation is verbally, either in person or over the telephone, followed by written communication. *Send a mediation offer letter to the parents by certified mail. Attach a response form to the letter indicating (1) acceptance or nonacceptance of the offer and (2) an option to waive or not waive the 45-day requirement. It is recommended that the parents sign and return the response form before a mediation session is scheduled. Send a copy of the signed response form to the hearing officer. Retain copies of all correspondence for documentation purposes.*

The following is an example of a mediation offer letter.

Appendix II-1

MEDIATION OFFER

DATE

NAME
ADDRESS
CITY, STATE ZIP CODE

Dear (Parent's Name)

A request for a due process hearing was received by this office on (Date). This office sent a letter on (Date) advising you of your due process hearing rights. However, the School Board of (County Name) County, Florida, would like to offer you the opportunity for mediation. Mediation is an informal meeting. It provides an opportunity for you and the school district to discuss concerns. An objective third person, a Mediator, will conduct the mediation session. He/she will assist you and the school district to resolve differences and reach solutions to the problem(s).

Mediation is not required by law. It does not cancel the due process proceedings. However, it may require additional time beyond the 45 day time requirement. This means that the hearing must be held and a decision made by the Hearing Officer by (Date) (45 days from the time your request was received). If you would like to consider mediation, you may waive (voluntarily give up) the 45 day time limit.

Attached is a form letter that may be used to indicate your decision regarding a mediation session. Please sign, date and return the attached form letter to this office. A self-addressed, stamped envelope is provided for your convenience.

(Complimentary Close)

Grievance Coordinator

(Reference initials)

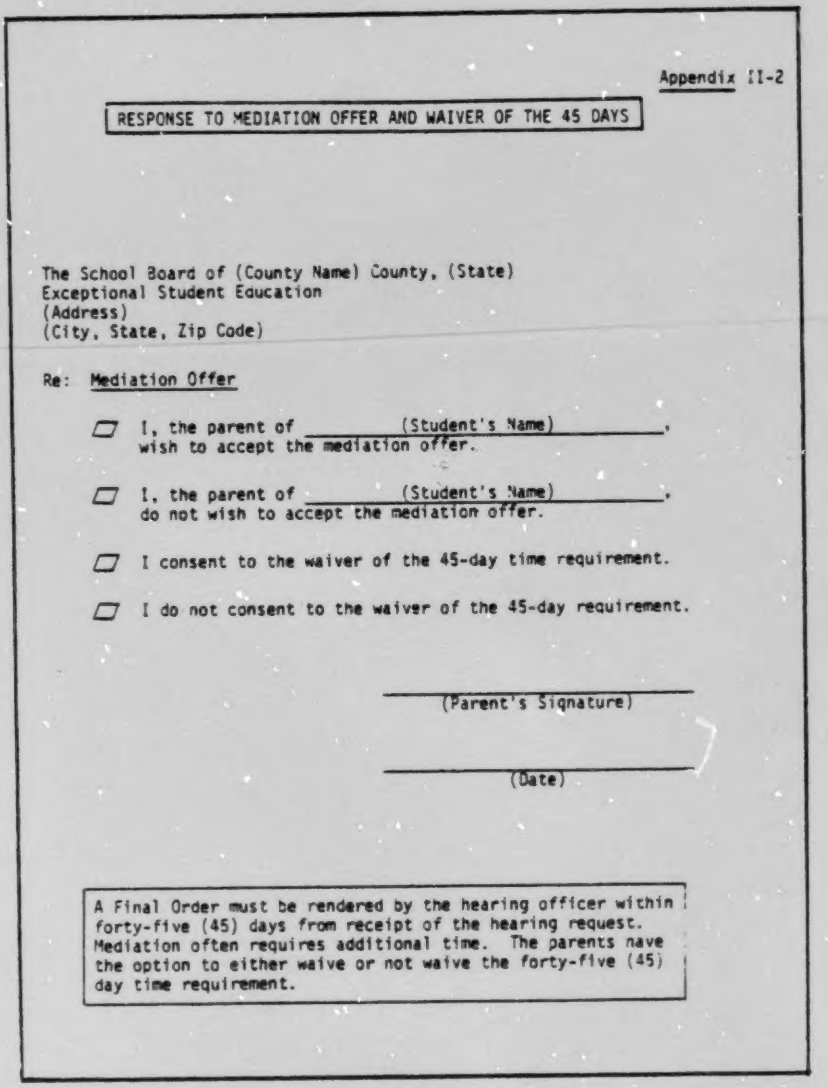
attachment

cc: School Board Attorney

This letter offers parents the opportunity to mediate. Attached to this letter is a response form letter, Response to Mediation Offer and Waiver of the 45 Days.

BEST COPY AVAILABLE

The following is an example of a response to the mediation offer and waiver of the 45-day requirement.



Appendix II-2

RESPONSE TO MEDIATION OFFER AND WAIVER OF THE 45 DAYS

The School Board of (County Name) County, (State)
Exceptional Student Education
(Address)
(City, State, Zip Code)

Re: Mediation Offer

☐ I, the parent of ______(Student's Name)______, wish to accept the mediation offer.

☐ I, the parent of ______(Student's Name)______, do not wish to accept the mediation offer.

☐ I consent to the waiver of the 45-day time requirement.

☐ I do not consent to the waiver of the 45-day requirement.

____
(Parent's Signature)

____
(Date)

A Final Order must be rendered by the hearing officer within forty-five (45) days from receipt of the hearing request. Mediation often requires additional time. The parents have the option to either waive or not waive the forty-five (45) day time requirement.

BEST COPY AVAILABLE

ARRANGEMENTS FOR THE MEDIATION SESSION

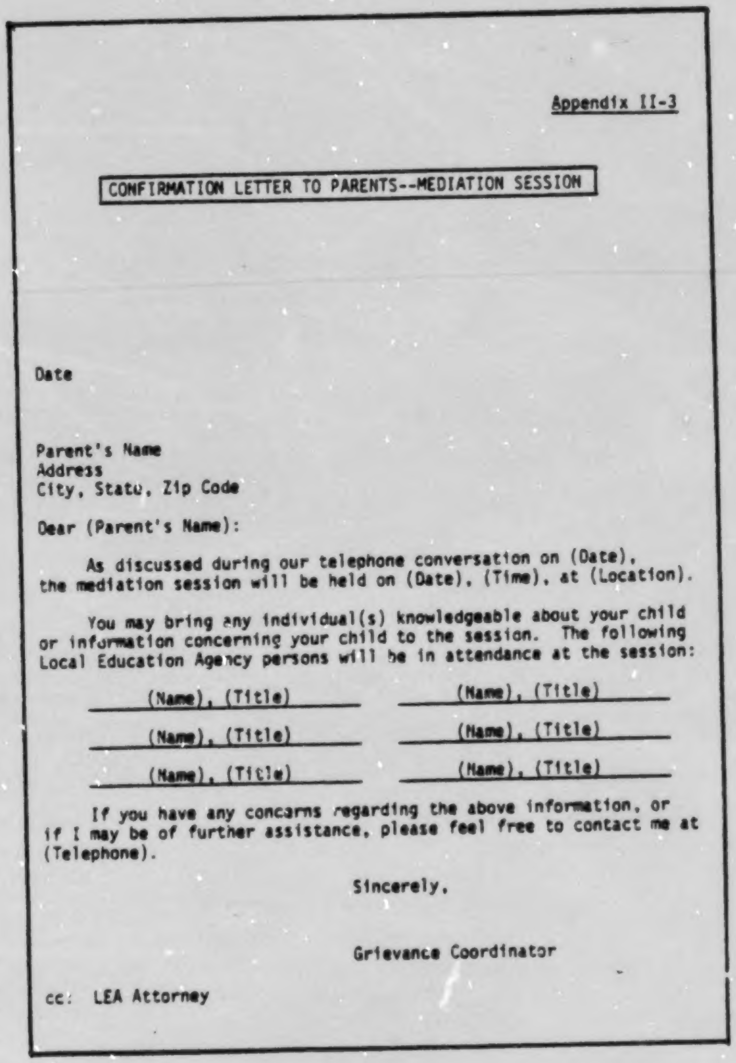
Mutually establish a time, date, and place to conduct the mediation session. The selection of an appropriate facility requires some consideration. The physical setting should be a quiet, well ventilated, well lit room, large enough to accommodate all participants. The meeting may be held at an administrative level conference room, a community facility, or a school. Provisions should be made for the services of a secretary, access to a copy machine, and refreshments for participants.

Participants should be informed that mediation can be a lengthy process and they should allow up to six hours for the session. Generally, most sessions last two to three hours. Participants must remain for the entire session. Sometimes, several sessions may be required and participants should be prepared to plan accordingly.

Be sure that any pertinent data, records, or materials to be used or presented during the mediation session will be available. It is recommended that participants bring all of the student's education records, evaluation data, cumulative folder, and any other data concerning the student.

Confirm the arrangements with the parents and inform them of those persons who will be in attendance at the session. This may be accomplished over the telephone and followed up with written communication. *Notify LEA participants of the arrangements either by telephone or letter.*

The following is an example of a confirmation letter to the parents regarding the date, time, and place for the mediation session. Included are the names and titles of those persons who will be in attendance at the session.



Appendix II-3

CONFIRMATION LETTER TO PARENTS--MEDIATION SESSION

Date

Parent's Name
Address
City, State, Zip Code

Dear (Parent's Name):

As discussed during our telephone conversation on (Date), the mediation session will be held on (Date), (Time), at (Location).

You may bring any individual(s) knowledgeable about your child or information concerning your child to the session. The following Local Education Agency persons will be in attendance at the session:

(Name), (Title)　　(Name), (Title)
(Name), (Title)　　(Name), (Title)
(Name), (Title)　　(Name), (Title)

If you have any concerns regarding the above information, or if I may be of further assistance, please feel free to contact me at (Telephone).

Sincerely,

Grievance Coordinator

cc: LEA Attorney

The following is an example of a letter which notifies LEA personnel of a scheduled mediation session and requests their attendance.

Appendix II-4

NOTICE TO LEA PERSONNEL - ATTENDANCE AT MEDIATION SESSION

Date:

TO: LEA Personnel

FROM: Grievance Coordinator

SUBJECT: MEDIATION SESSION CONCERNING - (Student's Name)

This is to notify you that your attendance is requested at a Mediation Session to be held on (Date), (Time), at (Location).

The (County's Name) County School System and the parents have agreed to mediation as an interim step in the due process procedures. Mediation is an informal and flexible way of resolving differences through understanding and/or compromise of differing viewpoints. The mediation process enables the parties involved to present their respective positions with the idea that through understanding a mutually agreed upon solution may be reached. Mediation does not require the cancellation of the due process proceedings.

Generally, most sessions take two to three hours. Depending on circumstances the session may need to be extended and/or rescheduled. You are asked to remain the entire session. Please plan accordingly. Please bring any information, such as the student's records, Psychological Folder, Cumulative Folder, Student Folder, P.R.E.P. Folder, observations and work samples.

(initials)

LEA Personnel involved in the case most frequently include the school principal, ESE Administrators/Supervisors, student's teacher(s), the school psychologist, staffing specialist, and guidance counselor. All persons involved in the case are notified and should be available to participate in the mediation session. However, the mediator will determine which persons do participate.

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QUALIFICATIONS OF THE MEDIATOR

A person who is selected as a mediator must possess a set of skills which, when combined, will encourage open communication between two disagreeing parties. Hopefully, this facilitating role will result in mutual agreement at a level which is much less formal than a due process hearing.

Individuals who possess the skills below may be found in public school districts, university settings, other community agencies and in the private sector. In terms of background information, a mediator must be thoroughly familiar with the following areas:

a) federal laws and regulations related to handicapped children

b) state laws and rules related to handicapped and gifted students

c) local policies and procedures related to programs for handicapped and gifted students

d) the needs of handicapped and gifted students

e) the programs and services in the public school and in the community which might be used as resources

f) assessment instruments and evaluation procedures commonly used to identify exceptional students

In addition to knowledge, a successful mediator must be able to:

a) relate well to people

b) be sensitive to the feelings of persons under stress

c) facilitate group interaction and to manage the group process

d) maintain objectivity

e) communicate clearly and simply to persons who are unfamiliar with professional jargon

f) exercise good judgment

g) bring about compromise without allowing individuals to feel that they have "given in" or "lost"

h) summarize and write an agreement reached as the result of mediation

PERSONS INVOLVED IN MEDIATION SESSIONS

Persons who are usually involved in mediation sessions include the mediator, the parents, legal aid, child advocacy organizations, a relative, the child (when appropriate), and LEA personnel. Additional individuals from the community who may also be involved include, but are not limited to, consultants, independent evaluators, specialists, and other persons knowledgeable in the field of special education.

LEA personnel involved in the mediation session may vary greatly depending upon the case. They may include but are not limited to:

a) area superintendent
b) area coordinator of exceptional student education
c) director of psychological services
d) curriculum supervisor
e) principal
f) staffing specialist
g) curriculum specialist
h) psychologist
i) special education teacher
j) regular education teacher
k) speech pathologist or clinician
l) visiting teacher
m) social worker
n) physical therapist
o) occupational therapist

The LEA should be sure there is a representative present who is knowledgeable about school board policies and procedures, the range of programs, program alternatives, and related services. It is extremely important that this individual has the authority to commit the resources of the LEA.

PREPARATION BY THE MEDIATOR PRIOR TO THE MEDIATION SESSION

In order to maintain impartiality, the mediator should not discuss the case with parents, their representatives, or LEA personnel prior to the mediation session.

The mediator needs only to be aware of the major facts. Individual judgment determines the actual amount of information needed for the mediation session. Data for review might include the student's individual educational program, staffing proposals, identifying information (such as name, birthdate, grade, exceptionality, etc.), evaluations, and tests. The mediator should review the data to determine whether:

a) procedural safeguards have been followed

b) District Procedures have been followed

c) required signatures and dates are present

d) evaluations, tests, and other data agree or disagree

e) the programs and/or placements being proposed for the student are appropriate

f) evaluation procedures used in determining the student's needs are appropriate in nature and degree

g) there are any independent evaluations

h) the student's unique and special needs have been appropriately identified

After reviewing the data and pertinent information on the case, the mediator should:

a) make some notes for later use at the session

b) review any other information as considered necessary

c) decide what the parties' positions or stands are, and how they might be addressed at the mediation session

d) decide on some possible alternatives to suggest

The mediator also needs to carefully consider the number of persons to be included in the mediation session. Too many people can be intimidating to the parent, though there may be some parents who are impressed by and would prefer many people at the session. The mediator usually decides which LEA personnel need to participate. Limiting the number of participants allows for better communication and results in a more free and open exchange of information.

THE MEDIATION SESSION

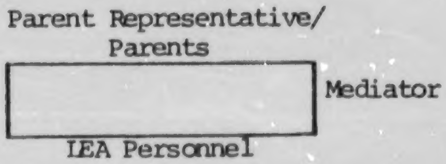
A mediation session is a meeting which is held between individuals who have differing opinions on what constitutes a free appropriate public education (FAPE) for a particular student. The meeting is considerably more formal than a school conference or staffing but less formal than a due process hearing. The mediator plays a central role in this meeting and the outcomes of the session are often dependent upon the skill of this individual. The mediation session is comprised of several distinct stages.

Stage I - Preliminary Stage

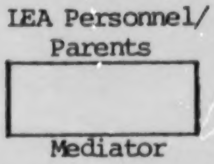
The preliminary stage begins prior to the arrival of the participants, with the mediator making sure that any pertinent data, records, or materials to be used or presented during the session are readily available and the arrangement of the room facilitates communication.

The mediator should be aware that participants seated around an adult-sized table will be more comfortable. There are usually three basic ways of seating participants.

1.



2.



3.

Random
Seating

The first two arrangements are more advisable because they place the mediator in a more controlled position. In addition, they allow the parties to speak directly to each other.

As participants arrive, the mediator should introduce him/herself and indicate where participants are to sit. Once everyone is seated, the mediator should introduce each individual by name and title.

The final and perhaps the most crucial step in this preliminary stage is establishing a climate conducive to joint decision making. One of the first decisions the group may need to make is whether to allow for the recording of the discussion. Though recorded information is helpful in later report writing, recording should not be attempted if it makes people uncomfortable and results in inhibiting discussion.

The mediator should review the purpose of mediation and the procedures that will be utilized during the session. This review should include:

a) an explanation of the mediator's role which involves listening, questioning, and providing technical assistance

b) facilitating discussions aimed at reaching viable alternatives, agreements, and solutions

c) a statement about mediation within the context of the due process hearing proceedings

d) a reiteration of the procedural safeguards afforded both parties

e) a statement indicating that the focus of the discussion will be limited to the present situation and the facts necessary to work toward its solution

In addition, the mediator should explain that it may be necessary to recess or caucus. A recess period allows participants a chance to think about what has occurred and what solutions might be agreeable to them and offers a respite in the proceedings. A caucus refers to a private meeting between the mediator and each of the parties. If the parents have brought along a person to assist them, the parents and their assistant may wish to caucus. A caucus is used to help determine the true issues and positions of the parties, the parties' "bottom lines," and what alternatives are being considered to the proposed plan. Parties may want to share confidential information with the mediator. They should be assured that any confidential information that is revealed to the mediator will not be shared without their consent. The mediator will also need to address what will occur in the event that the mediation session fails to produce mutually agreeable solutions.

Stage II - Discussion

This stage begins with the mediator allowing each party to briefly present their position stating what they perceive to be the problem(s) or issue(s). It is recommended that the parents be given the opportunity to speak first. During the discussion period, the mediator should:

a) prevent either party from monopolizing discussion

b) clarify statements through questioning techniques

c) summarize statements that may be misinterpreted or not understood

d) provide periodic summaries of the discussion

e) provide technical assistance as necessary

f) call a recess or caucus when appropriate

g) assist in exploring alternatives

h) encourage full, active participation of all parties

Stage III - Closure

This stage begins when parties have reached mutually agreed upon solutions. The mediator should:

a) verbally summarize the agreement(s)

b) indicate who will be responsible for implementation

c) specify time frames for implementation

d) indicate what action is expected of each individual

e) discuss time frames and procedures for dismissal of the case

f) state procedures to follow if implementation does not proceed as planned

Not all mediation sessions result in resolution of the differences. The mediator must determine:

a) whether any movement in the parties' positions is possible or whether they have reached an impasse where further time spent in mediation may be unprofitable

b) whether to terminate the session and reschedule another

c) whether to terminate the session and inform the parties of the next step in the due process proceedings

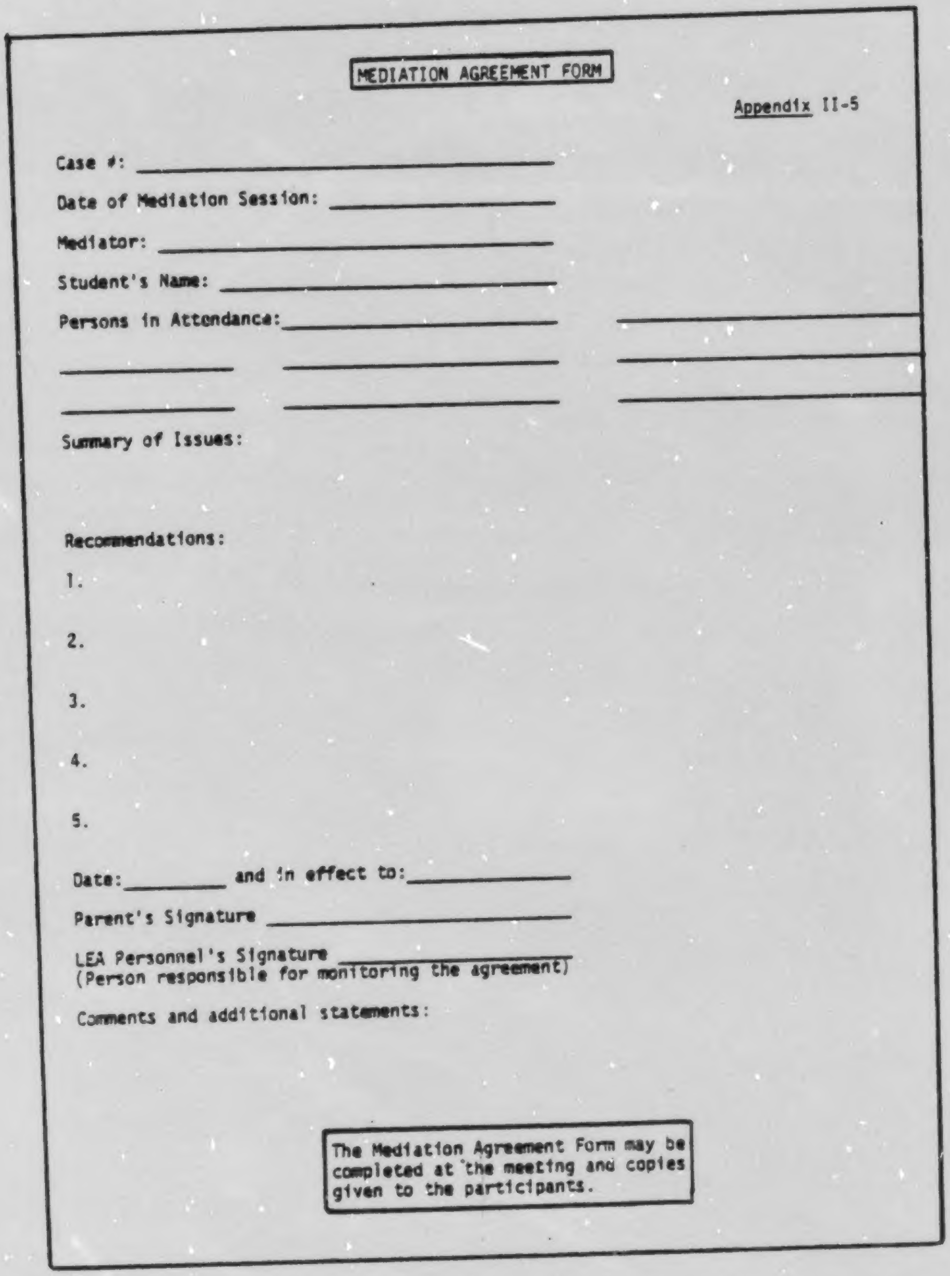
If another working session is needed, schedule a time, date, and place for the next session. The mediator should ensure that a written summary of the proceedings will be available. A mediation agreement form or a written summary report may be used. Include in the form or report the date of the mediation session, persons in attendance, a summary of issues, agreements and recommendations, and monitoring procedures. The agreement form may be completed at the session and copies given to participants. The summary report is a more lengthy report and is written after the session. Send copies of the report to participants. Refer to Appendix II-G for a sample written mediation summary report.

CASE DISMISSAL

A mediation session resulting in the implementation of mutually agreeable solutions requires that the petitioner (party requesting the due process hearing) submit a written request for dismissal. The dismissal request should be sent to the appropriate LEA person in charge of due process hearing matters. *Send a copy of the request to the hearing officer.*

The case file is closed upon receipt of a Dismissal Order from the hearing officer.

The following is an example of a mediation agreement form. Refer to Appendix II-6a,b,c for an example of a written mediation summary report.



MEDIATION AGREEMENT FORM

Appendix II-5

Case #: ____________________

Date of Mediation Session: ____________

Mediator: ____________________

Student's Name: ________________

Persons in Attendance: ____________ ____________

____________ ____________ ____________

____________ ____________ ____________

Summary of Issues:

Recommendations:

1.

2.

3.

4.

5.

Date: ________ and in effect to: ____________

Parent's Signature ________________

LEA Personnel's Signature ____________
(Person responsible for monitoring the agreement)

Comments and additional statements:

The Mediation Agreement Form may be completed at the meeting and copies given to the participants.

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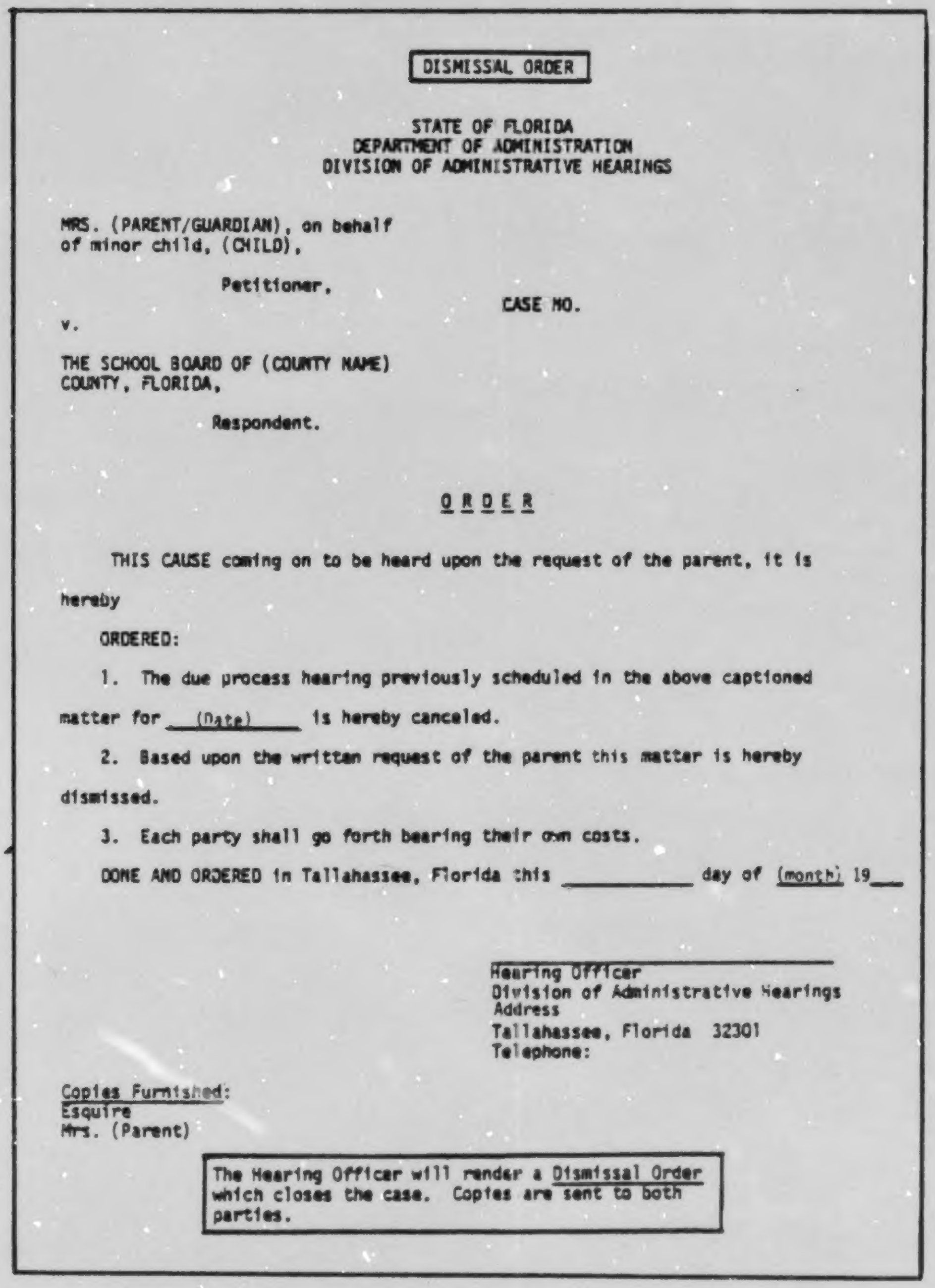
The following is an example of a dismissal order.



DISMISSAL ORDER

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATION
DIVISION OF ADMINISTRATIVE HEARINGS

MRS. (PARENT/GUARDIAN), on behalf
of minor child, (CHILD),

Petitioner,

CASE NO.

v.

THE SCHOOL BOARD OF (COUNTY NAME)
COUNTY, FLORIDA,

Respondent.

ORDER

THIS CAUSE coming on to be heard upon the request of the parent, it is hereby

ORDERED:

1. The due process hearing previously scheduled in the above captioned matter for ___(Date)___ is hereby canceled.
2. Based upon the written request of the parent this matter is hereby dismissed.
3. Each party shall go forth bearing their own costs.

DONE AND ORDERED in Tallahassee, Florida this ____________ day of (month) 19___

Hearing Officer
Division of Administrative Hearings
Address
Tallahassee, Florida 32301
Telephone:

Copies Furnished:
Esquire
Mrs. (Parent)

The Hearing Officer will render a Dismissal Order which closes the case. Copies are sent to both parties.

BEST COPY AVAILABLE

SECTION III - DUE PROCESS HEARING

OVERVIEW - DUE PROCESS HEARINGS

A due process hearing provides a mechanism for resolving disagreements between the parents and the local education agency (LEA) in matters relating to the student's educational program or the provision of a free appropriate public education (FAPE) for the student. A hearing is the final recourse when there is a disagreement or impasse between parents and the LEA. Hearings may be requested by parents, guardians, the LEA, or any other person or agency who has legal responsibility for the student.

A hearing is an administrative procedure which is formal in nature. It is conducted by an impartial hearing officer. The hearing officer must look at the record, listen to testimony, examine the evidence, and then make a fair and impartial decision as to the appropriateness of the educational program or services offered to the student.

The party that has requested or initiated the hearing is known as the petitioner and the responding party is known as the respondent. Both the petitioner and respondent may present evidence and witnesses, may confront and cross-examine witnesses, and may rebutt evidence presented by the other party. Both parties are usually represented by legal counsel at the hearing.

The hearing must be held and a final order entered within 45 days (including weekends and holidays) from the time of receipt of the hearing request, unless the 45-day requirement is waived.

If either party disputes the decision of the hearing officer or feels that they have been denied an impartial hearing, they may request a state level review or appeal to a civil court.

The LEA attorney may handle all matters for the due process hearing or work in conjunction with a grievance coordinator who is assigned this responsibility. If the latter is used, then it is extremely important that the grievance coordinator and the LEA attorney keep each other informed of all correspondence regarding the case and updated on the status of the case.

The term "grievance coordinator" as used in this manual indicates the individual who is responsible for due process matters and for the myriad of detail involved in preparing for a hearing. The grievance coordinator may or may not be the LEA spokesperson at the hearing. It is the decision of the superintendent of each LEA to determine if a grievance coordinator will be appointed and who will serve in that capacity.

The purpose of this section is to assist the LEA to prepare for a due process hearing. The following pages describe each step in the hearing process. The information includes legal requirements as well as best practice suggestions.

HEARING ISSUES

The following chart shows the circumstances for which the parents or LEA may initiate a due process hearing.

Issue	Parents	LEA
IDENTIFICATION EVALUATION	request an evaluation and LEA refuses	proposes an initial screening/evaluation; parents withhold consent
	disagree with eligibility recommendation	does not believe parents' request for an independent evaluation is justified
PROGRAM	disagree with the proposed IEP	
	disagree with placement decision	proposes initial placement, parents withhold consent
	disagree with a proposed program change	
	disagree with appropriateness of program	
	request specific related service	
	request payment for private placement	

HEARING RIGHTS
PRIOR TO, DURING, AND AFTER THE HEARING

AUTHORITY

SBER: 6A-6.331

CFR: 121a.506
121a.504
121a.403

A due process hearing may be initiated by a parent or LEA on the proposal to initiate or change the identification, evaluation, or the educational placement of a child or the provision of a free appropriate public education or the refusal of the above.

Parents or LEA's may request a hearing at any time there is disagreement concerning the appropriateness of a student's education program. This hearing is known as a *due process hearing*. The right to a due process hearing is one of the most important components of the procedural safeguard mandates.

The due process hearing must be held and a decision rendered not more than 45 days from the time the hearing request is received. LEA's are responsible for informing parents of their rights and responsibilities prior to, during, and after a hearing.

Whenever a hearing is requested, parents must be notified in writing of their rights. Both the parents and the LEA have rights and responsibilities prior to, during, and after the hearing. They each have the right to:

a) request an impartial due process hearing, with the results of that hearing mailed to them within forty-five (45) days after the receipt of that request

b) have the hearing conducted by an impartial hearing officer, who will not be an employee of the local school district nor will he have a personal or professional interest in the outcome of the hearing

c) be accompanied and advised by an attorney or other individuals with special knowledge of exceptional children

d) present evidence, or to prevent the introduction of evidence that has not been provided to the other party at least five (5) days prior to the hearing

e) question and require the attendance of witnesses

f) obtain a written or taped record of the hearing

g) obtain the written findings and the decision of the hearing officer

h) appeal the decision of the hearing officer within ten (10) days to the Commissioner of Education for review--a decision will be given within thirty (30) days of the request for a state level review

i) appeal the decision of the Commissioner of Education to the courts

In addition to the aforementioned rights, the parents have the right to:

a) participate in the selection of a hearing officer

b) have the hearing scheduled at a reasonably convenient time

c) have their child present at the hearing

d) open the hearing to the public upon request (the hearing will be closed to the public unless they request that it be open)

e) receive from the school district information about free or low-cost legal and other appropriate services (this information will be provided upon request, or if a hearing is requested by either the parent or LEA)

f) request and obtain an independent evaluation

g) have an interpreter present at all meetings

h) obtain and examine copies of school records

In addition, the child will remain in his/her present program during all hearings and appeals, unless the parent and the school district agree to another placement. If the student is not attending school, the parent may agree to place him in a public school program until all hearings are completed.

An individual will be assigned to act as a surrogate parent to represent the child in providing an education if:

- the child is a ward of the state
- no parent/guardian can be identified
- no parent/guardian can be located

IMPARTIAL HEARING OFFICERS

AUTHORITY

SBER: 6A-6.331

CFR: 121a.507

The impartial hearing officer will not be an employee of the LEA or have an interest in the outcome of the hearing.

Hearing officers must conduct hearings in a fair and impartial manner. Their role is crucial in ensuring that the intent of the procedural safeguards is satisfied. They must summarize the facts and findings of the hearing and arrive at an impartial decision based solely on information presented during the hearing. Copies of the facts, findings, and decisions regarding the hearing will be mailed to all parties by the hearing officer.

Hearing officers are accountable for all deadlines and procedures in the statutes and rules concerning due process hearings. Confidentiality of information must be maintained.

Hearing officers may rule on requests for specific extensions of time beyond the 45-day time requirement at the request of either party. The decision of the hearing officer is final unless the parents or LEA appeal.

The LEA must keep a list of persons who may serve as hearing officers. The listing should include a statement of the qualifications of each person.

Hearing officers must:

a) not be an officer or employee of the LEA involved in the education or care of the child

b) be over the age of majority

c) not have been involved previously in any decisions regarding the child's identification, evaluation, placement or review

d) not have worked as a consultant for the school district's special programs for exceptional students

e) have successfully completed a training program conducted or approved by the Division of Public Schools

f) be sufficiently free of other obligations to complete the duties and responsibilities of a hearing officer

The responsibilities of the hearing officer are:

a) to conduct the hearing in a fair and impartial manner

b) to summarize the facts and findings of the case and to arrive at an impartial decision based solely on information presented during the hearing

c) to mail copies to all parties of the facts, findings and decision regarding the hearing

d) to be accountable for all deadlines and procedures in the statutes and rules for such hearings

e) to maintain confidentiality of all information

f) to rule on requests for specific extensions of time beyond the periods set forth in this subsection at the request of either party

Several timeline requirements are included in law. They are summarized below:

a) a hearing must be held and a decision rendered by the hearing officer within 45 days of receipt of the request for a hearing, unless the 45-day time requirement is waived

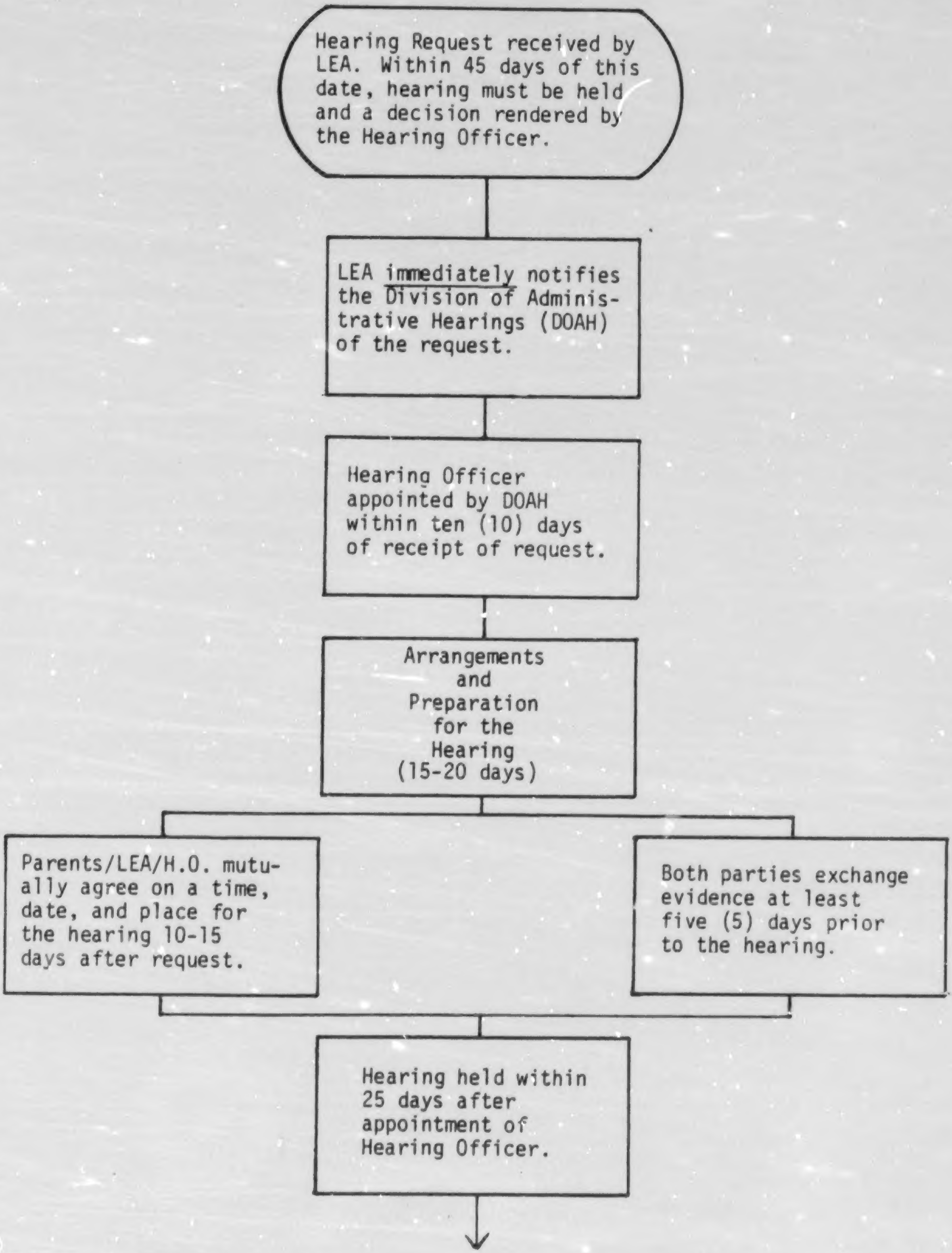
b) information must be disclosed at least five (5) days prior to the hearing

c) appeals must be made within ten (10) days to the Commissioner of Education

d) the Commissioner of Education must render his decision within thirty (30) days of the appeal request

e) all other times mentioned in the chart on the following pages are approximations

DUE PROCESS HEARING TIMELINES



Hearing Request received by LEA. Within 45 days of this date, hearing must be held and a decision rendered by the Hearing Officer.

LEA immediately notifies the Division of Administrative Hearings (DOAH) of the request.

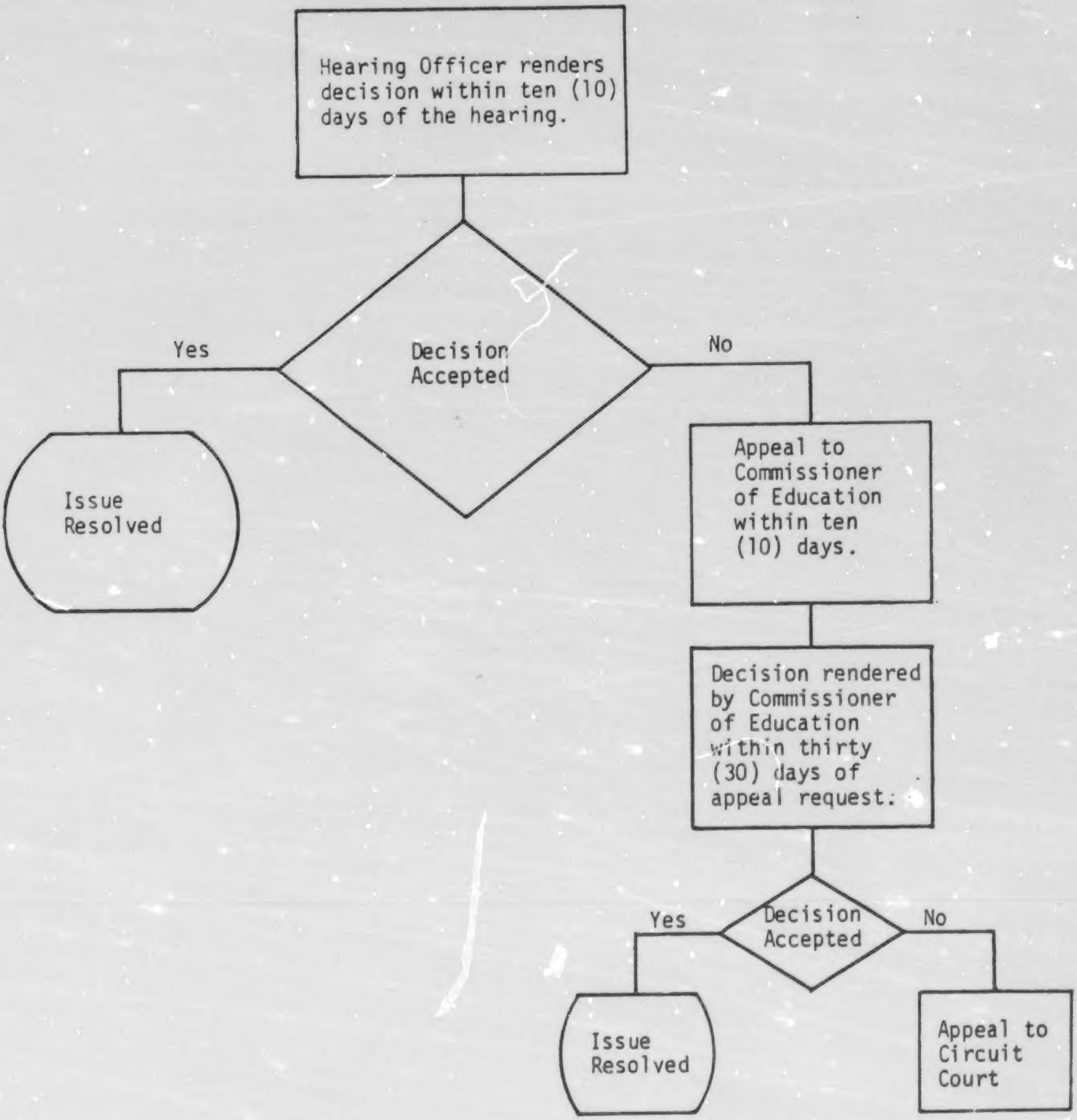
Hearing Officer appointed by DOAH within ten (10) days of receipt of request.

Arrangements and Preparation for the Hearing (15-20 days)

Parents/LEA/H.O. mutually agree on a time, date, and place for the hearing 10-15 days after request.

Both parties exchange evidence at least five (5) days prior to the hearing.

Hearing held within 25 days after appointment of Hearing Officer.


Hearing Officer renders decision within ten (10) days of the hearing.
Decision Accepted
Yes
No
Issue Resolved
Appeal to Commissioner of Education within ten (10) days.
Decision rendered by Commissioner of Education within thirty (30) days of appeal request.
Decision Accepted
Yes
No
Issue Resolved
Appeal to Circuit Court

REQUEST FOR A HEARING

The Request

A request for a due process hearing may be initiated by parents or professional personnel of the LEA. The party requesting the hearing is known as the petitioner.

It is preferable that the request is written and states the specific issue(s) or area(s) of disagreement. It should be noted that parents may not be required to use a particular format or even to submit a hearing request in writing. If a verbal request is received by the LEA, it will need to be documented by a written statement of receipt in order to facilitate the process. The parents should be provided a copy of the statement. *Written requests should be routed in accordance with the LEA's District Procedures document.*

The following are examples of parent-initiated hearing requests. One example is a letter written by the parent; the other is a form letter that may be used.

Appendix III-1

PARENT REQUEST FOR A DUE PROCESS HEARING

Date

Grievance Coordinator
Address
City, State Zip Code

Dear (Grievance Coordinator):

We do not agree with the Staffing Committee's recommendation that our son (child's name) is Emotionally Handicapped.

We are requesting a due process hearing about this matter.

Sincerely,

(Parents)

This request for a hearing was initiated by the parents. Once the request is received by the LEA, a hearing must be held and a decision reached within 45 days of the date of receipt.

Though there is no required format, any request should minimally include the student's and parents' name and the issue.

BEST COPY AVAILABLE

Appendix III-2

PARENT REQUEST FOR A DUE PROCESS HEARING

(Form Letter)

Student Name: ______________________________ Date: __________

I hereby request a due process hearing regarding the following matter:

_______ Proposal to evaluate my child,

_______ Refusal to evaluate my child,

_______ Placement of my child in a special program for exceptional students,

_______ Refusal to place my child in a special program for exceptional students,

_______ Provision of a free public education appropriate for my child.

My request is based on the following reasons:

____

____

____

____

____

____

I have been informed of my rights in a hearing.

____
Parent Signature

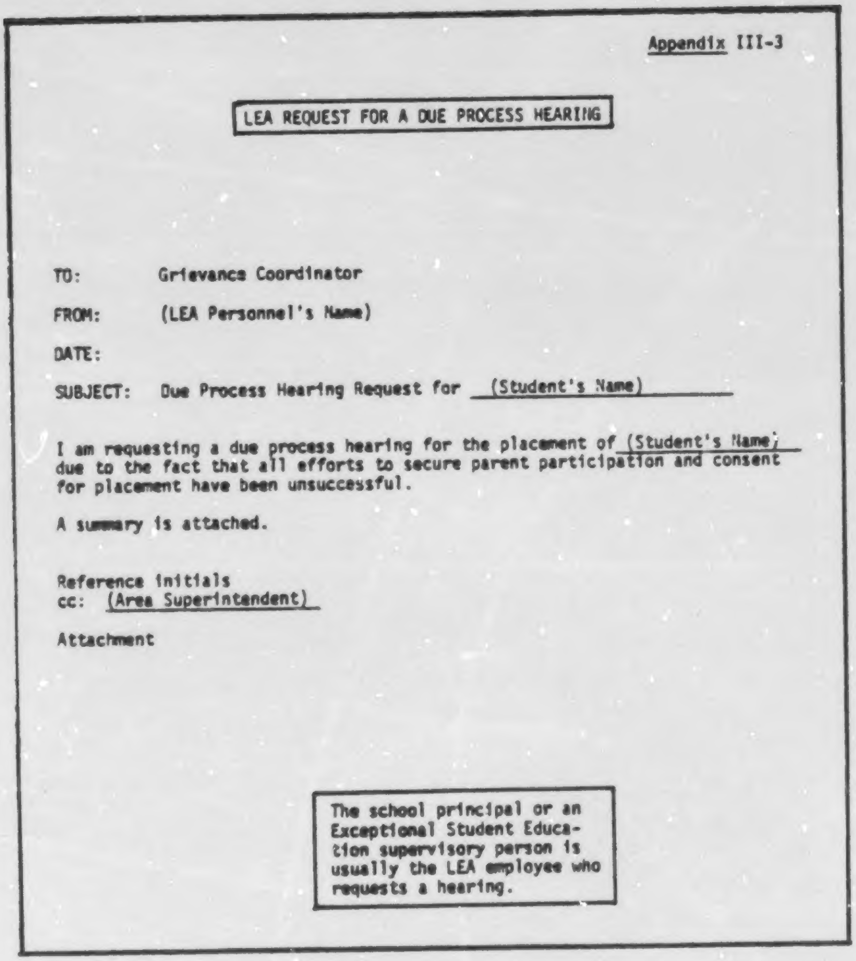
____
Address

____

A form letter may be used but cannot be required when a parent wishes to request a hearing.
This form may be also completed by the LEA after receiving a verbal request.

BEST COPY AVAILABLE

The following is an example of an LEA initiated request for a hearing.



Appendix III-3

LEA REQUEST FOR A DUE PROCESS HEARING

TO: Grievance Coordinator

FROM: (LEA Personnel's Name)

DATE:

SUBJECT: Due Process Hearing Request for (Student's Name)

I am requesting a due process hearing for the placement of (Student's Name) due to the fact that all efforts to secure parent participation and consent for placement have been unsuccessful.

A summary is attached.

Reference initials
cc: (Area Superintendent)

Attachment

The school principal or an Exceptional Student Education supervisory person is usually the LEA employee who requests a hearing.

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NOTIFICATION OF REQUEST

Notifying the Division of Administrative Hearings

Upon receipt of the written request for a hearing, immediately inform the Division of Administrative Hearings. This contact should be made by telephone and followed up by sending a copy of the written request to:

The Director
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9675

Notification to Parents

The parents must be notified of their due process rights and responsibilities before, during, and after the hearing. A list of free or low-cost legal aid and a list of attorneys' names should be enclosed with the notice.

Send the Notification by registered or certified mail or have it hand delivered. Due to the importance of this information, it is necessary to substantiate that it has been received. *Be sure to secure a receipt of delivery.*

Notification to LEA Personnel

LEA personnel should be notified of the hearing request. Send a notice letter and attach a copy of the hearing request and a copy of the parent notification letter. Personnel who might typically receive this notice are the superintendent, school principal, and exceptional student education (ESE) supervisory or administrative personnel.

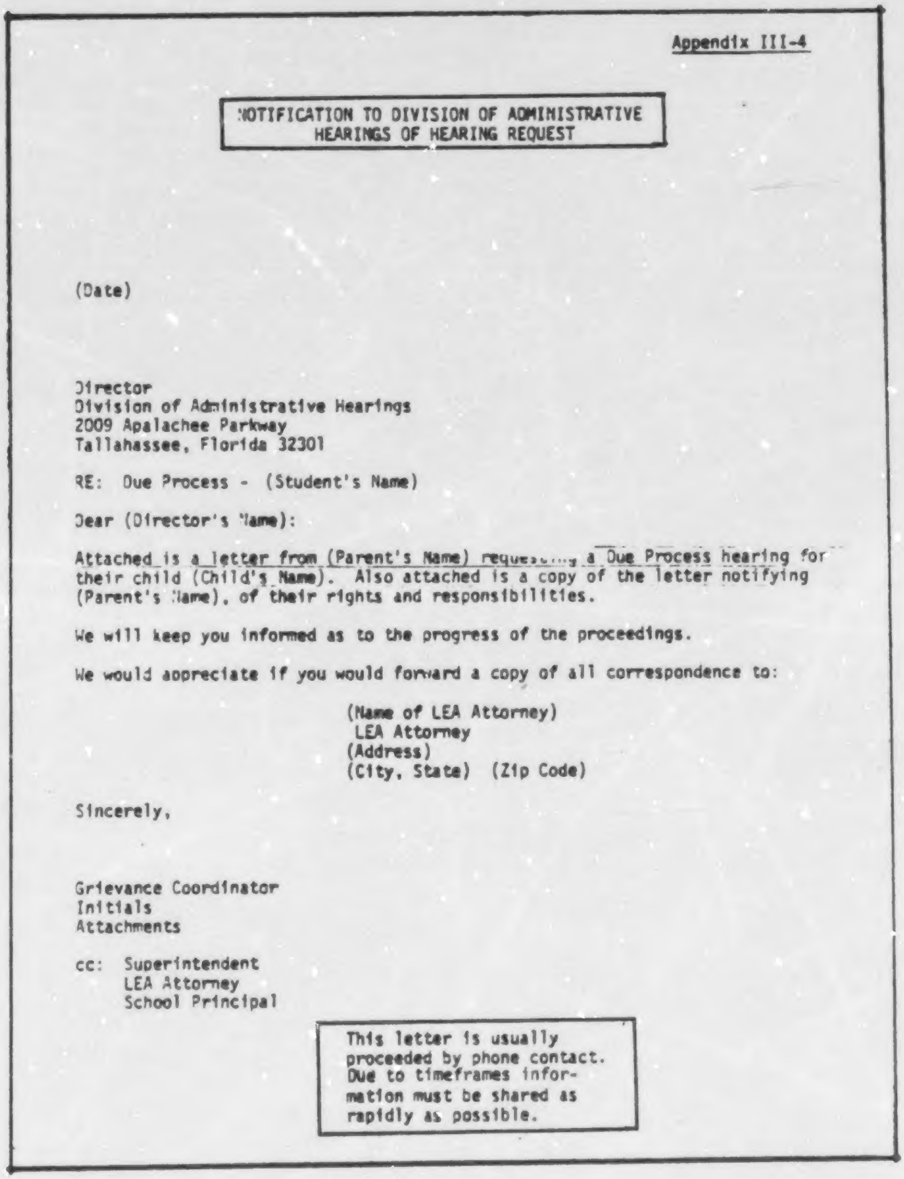
Notification to the LEA Attorney

The LEA attorney should be notified of the hearing request. Send a copy of all correspondence which would include the hearing request, the notification letter to the parents, the notification letter to the Division of Administrative Hearings, and the notification letter to LEA personnel.

Mediation Officer

Once a receipt is returned indicating the parents have received their notification letter regarding the hearing, mediation may be offered (unless the case was mediated unsuccessfully). The procedure to follow in offering mediation, as well as the mediation process, is described in detail in Section II.

The following is an example of a notice to the Division of Administrative Hearings that a hearing has been requested.



Appendix III-4

NOTIFICATION TO DIVISION OF ADMINISTRATIVE HEARINGS OF HEARING REQUEST

(Date)

Director
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301

RE: Due Process - (Student's Name)

Dear (Director's Name):

Attached is a letter from (Parent's Name) requesting a Due Process hearing for their child (Child's Name). Also attached is a copy of the letter notifying (Parent's Name), of their rights and responsibilities.

We will keep you informed as to the progress of the proceedings.

We would appreciate if you would forward a copy of all correspondence to:

(Name of LEA Attorney)
LEA Attorney
(Address)
(City, State) (Zip Code)

Sincerely,

Grievance Coordinator
Initials
Attachments

cc: Superintendent
LEA Attorney
School Principal

This letter is usually proceeded by phone contact. Due to timeframes information must be shared as rapidly as possible.

BEST COPY AVAILABLE

The following is an example of a notification letter to parents confirming that their hearing request was received. The letter also notifies them of their rights and responsibilities prior to, during, and after the hearing. If the hearing request was initiated by the LEA, a similar letter should be sent informing the parents of the request and notifying them of their rights and responsibilities.

Appendix III-5a

NOTIFICATION TO PARENTS OF RIGHTS AND RESPONSIBILITIES

Date

Parents' Name
Address
City, State Zip Code

Dear (Parents' Name):

This letter is in response to your letter of (Date), requesting a Due Process Hearing concerning the (issue) of your (son/daughter), Student's Name), who attends (School Name). This letter is to notify you of your rights and responsibilities before, during, and after the hearing. These include the right to:

a. have an impartial due process hearing conducted by an impartial hearing officer who will not be an employee of the school district.

b. particiapte in the selection of a hearing officer from the Division of Administrative Hearings, Department of Administration.

c. be accompanied and advised by individuals with special knowledge or training with respect to the problems of exceptional children.

d. be represented by legal counsel.

e. an interpreter (at no cost to you).

f. have the hearing scheduled at a reasonably convenient time.

g. examine and obtain copies of school records.

h. request an independent evaluation, if you disagree with an evaluation obtained by the district.

i. present evidence and confront, cross-examine, and compel the attendance of witnesses.

j. prohibit the introduction of any evidence at the hearing that has not been shared with you at least five days before the hearing.

k. have your child, the subject of the hearing, present.

l. determine if the hearing will be opened to the public or closed.

m. request information from the school district on any free or low-cost legal and other relevant services available.

n. request a verbatim record of the hearing and a written findings of fact and decision.

o. to have the decision of the hearing officer within 45 days of your request for the hearing. You may also waive the 45 day time requirement.

Appendix III-5b

If you wish to appeal the findings and decisions of the hearing officer, the appeal must be submitted in writing, within ten (10) days, to the Commissioner of Education.

If you wish to appeal the final decision of the Commissioner of Education, the appeal must be submitted to the District Court of Appeals in the District where the agency maintains its headquarters or where you reside. Review proceedings are in accordance with the Florida Appellate Rules and the Provisions of the Administrative Procedures Act, 1974.

The present educational program of your child, (child's name), shall remain the same until a decision concerning his/her educational program is finalized, unless you and the district can mediate prior to the hearing.

Enclosed are lists of the names, addresses, and phone numbers of free or low-cost legal aid, attorneys, and services. Please do not hesitate to contact this office at (phone number) if you have any questions or wish any assistance regarding this proceeding.

Cordially yours,

Grievance Coordinator

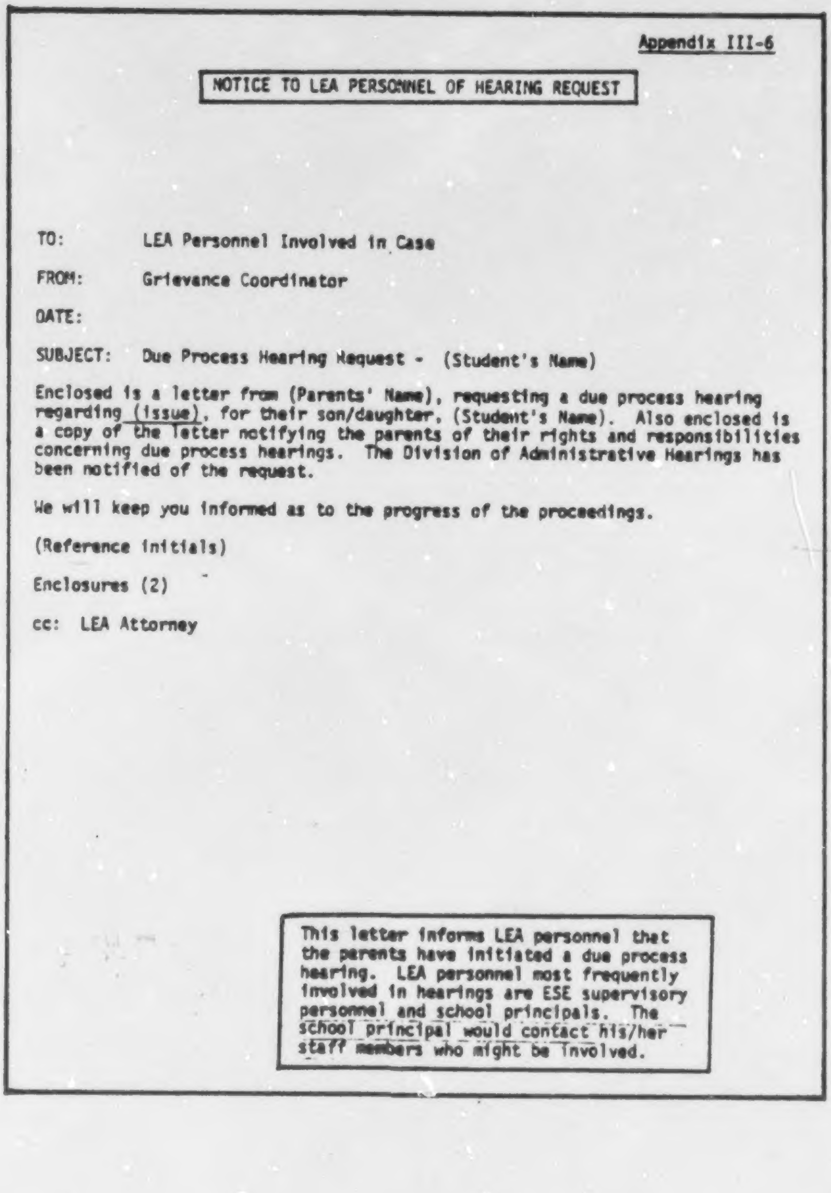
Reference initials
Enclosures (3)

cc: Superintendent of Schools
Director, Div. of Adm.
LEA Attorney
School Principal
ESE Administrator/Supervisor

Additionally, a district may choose to include:

1. copy(s) of the district procedures document
2. a copy of P.L. 94-142
3. a copy of Vol. 1-B (A Resource Manual for the *Development and Evaluation of Special Programs for Exceptional Students*)
4. pamphlets, booklets--information to parents

The following is an example of a notice to LEA personnel that a hearing has been requested.



Appendix III-6

NOTICE TO LEA PERSONNEL OF HEARING REQUEST

TO: LEA Personnel Involved in Case

FROM: Grievance Coordinator

DATE:

SUBJECT: Due Process Hearing Request - (Student's Name)

Enclosed is a letter from (Parents' Name), requesting a due process hearing regarding (issue), for their son/daughter, (Student's Name). Also enclosed is a copy of the letter notifying the parents of their rights and responsibilities concerning due process hearings. The Division of Administrative Hearings has been notified of the request.

We will keep you informed as to the progress of the proceedings.

(Reference initials)

Enclosures (2)

cc: LEA Attorney

This letter informs LEA personnel that the parents have initiated a due process hearing. LEA personnel most frequently involved in hearings are ESE supervisory personnel and school principals. The school principal would contact his/her staff members who might be involved.

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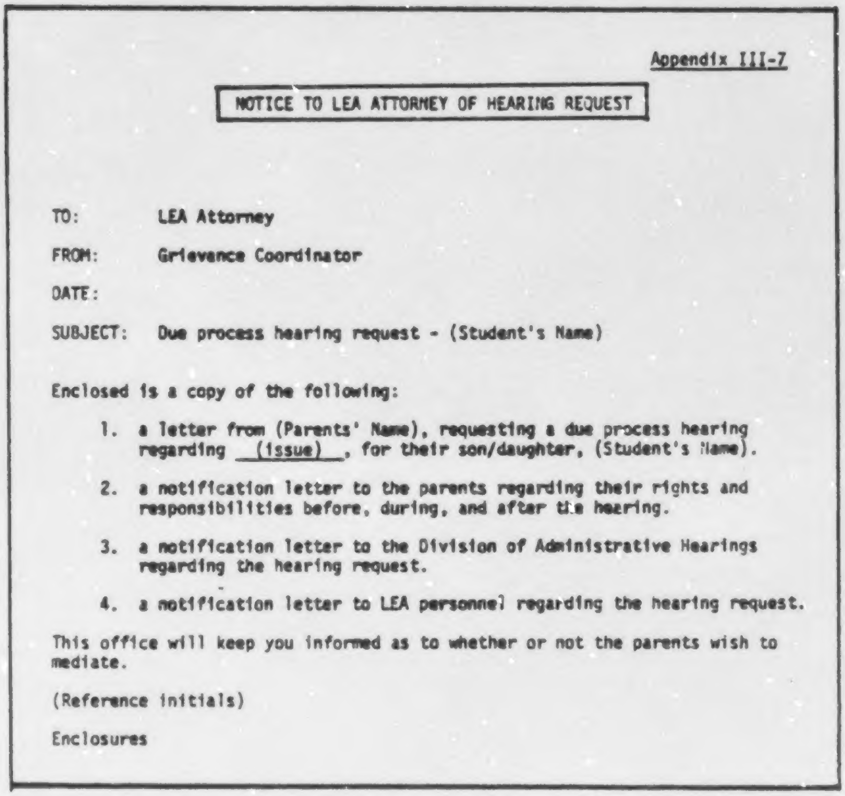
The following is an example of a notice to the LEA attorney that a hearing has been requested.



Appendix III-7

NOTICE TO LEA ATTORNEY OF HEARING REQUEST

TO: LEA Attorney

FROM: Grievance Coordinator

DATE:

SUBJECT: Due process hearing request - (Student's Name)

Enclosed is a copy of the following:

1. a letter from (Parents' Name), requesting a due process hearing regarding (issue), for their son/daughter, (Student's Name).
2. a notification letter to the parents regarding their rights and responsibilities before, during, and after the hearing.
3. a notification letter to the Division of Administrative Hearings regarding the hearing request.
4. a notification letter to LEA personnel regarding the hearing request.

This office will keep you informed as to whether or not the parents wish to mediate.

(Reference initials)

Enclosures

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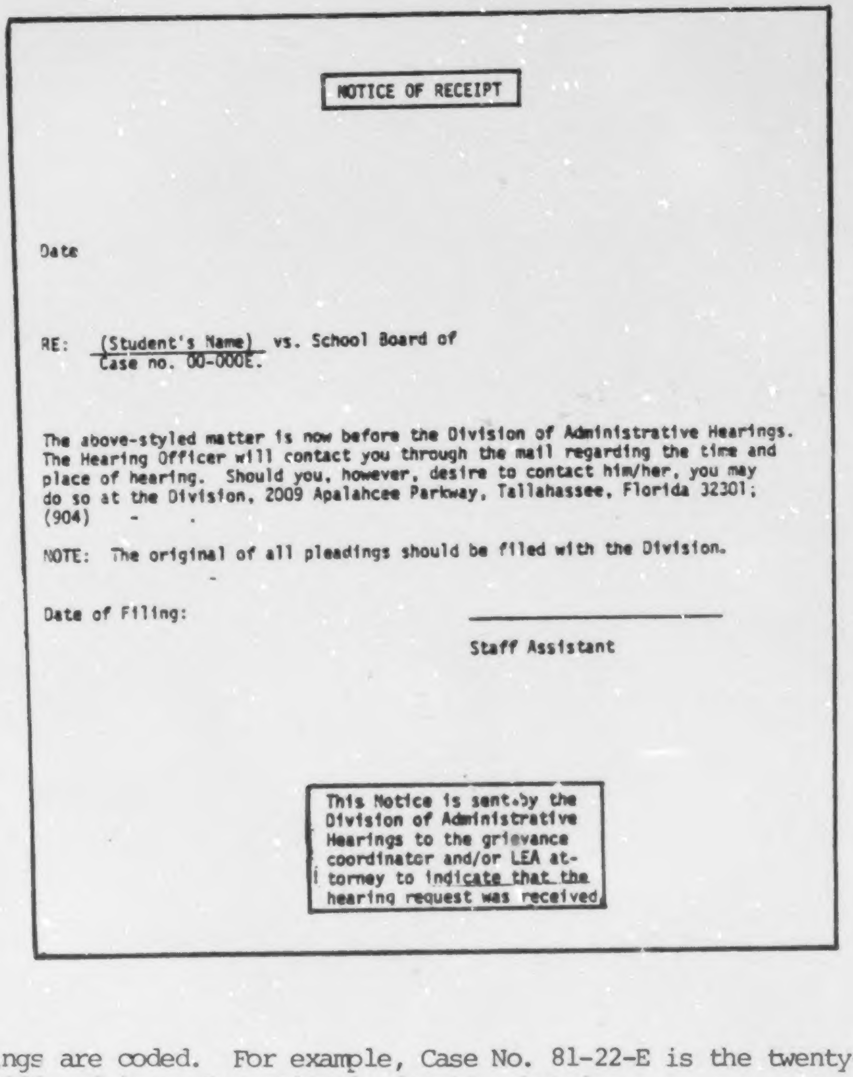
Notice of Receipt

The Division of Administrative Hearings will assign a number to the case* and send a Notice of Receipt to either the grievance coordinator or the LEA attorney.

The following is an example of a Notice of Receipt. The Notice is sent by the Division of Administrative Hearings and indicates that the hearing request was received.



NOTICE OF RECEIPT

Date

RE: (Student's Name) vs. School Board of
Case no. 00-000E.

The above-styled matter is now before the Division of Administrative Hearings. The Hearing Officer will contact you through the mail regarding the time and place of hearing. Should you, however, desire to contact him/her, you may do so at the Division, 2009 Apalahcee Parkway, Tallahassee, Florida 32301; (904) - .

NOTE: The original of all pleadings should be filed with the Division.

Date of Filing:

Staff Assistant

This Notice is sent by the Division of Administrative Hearings to the grievance coordinator and/or LEA attorney to indicate that the hearing request was received.

---

*All hearings are coded. For example, Case No. 81-22-E is the twenty-second case in 1982 and is an Exceptional education hearing.

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SELECTION OF A HEARING OFFICER

Selecting a Hearing Officer

Hearing officers are usually assigned to a case by the Division of Administrative Hearings. However, the parents and/or LEA may select the hearing officer from a list supplied by the Division of Administrative Hearings.

The Division of Administrative Hearings is part of the Department of Administration. It is a separate state agency which conducts hearings on a variety of cases, not just exceptional student education cases. Hearing officers are well trained and are all members of the Florida Bar Association. Their sole responsibility is to conduct administrative hearings. They must meet all required timelines prior to, during, and after a hearing.

The parents or LEA may challenge the appointment of a hearing officer if they believe he/she will not be impartial. This is done by appealing the selection of the hearing officer to the Director of the Division of Public Schools. If the parents or LEA choose not to select a hearing officer from the state department list, they may recommend an individual by submitting his/her name and qualifications for approval to the Director of the Division of Public Schools.

The hearing officer must remain an uninvolved decision maker. Therefore, details of the case should not be discussed with him/her, nor should opinions or advice be sought.

The Hearing Order

The hearing officer selected will send a hearing order to both parties within approximately 10-14 days of receipt of the hearing request. The order informs the parties of:

a) the name of the hearing officer

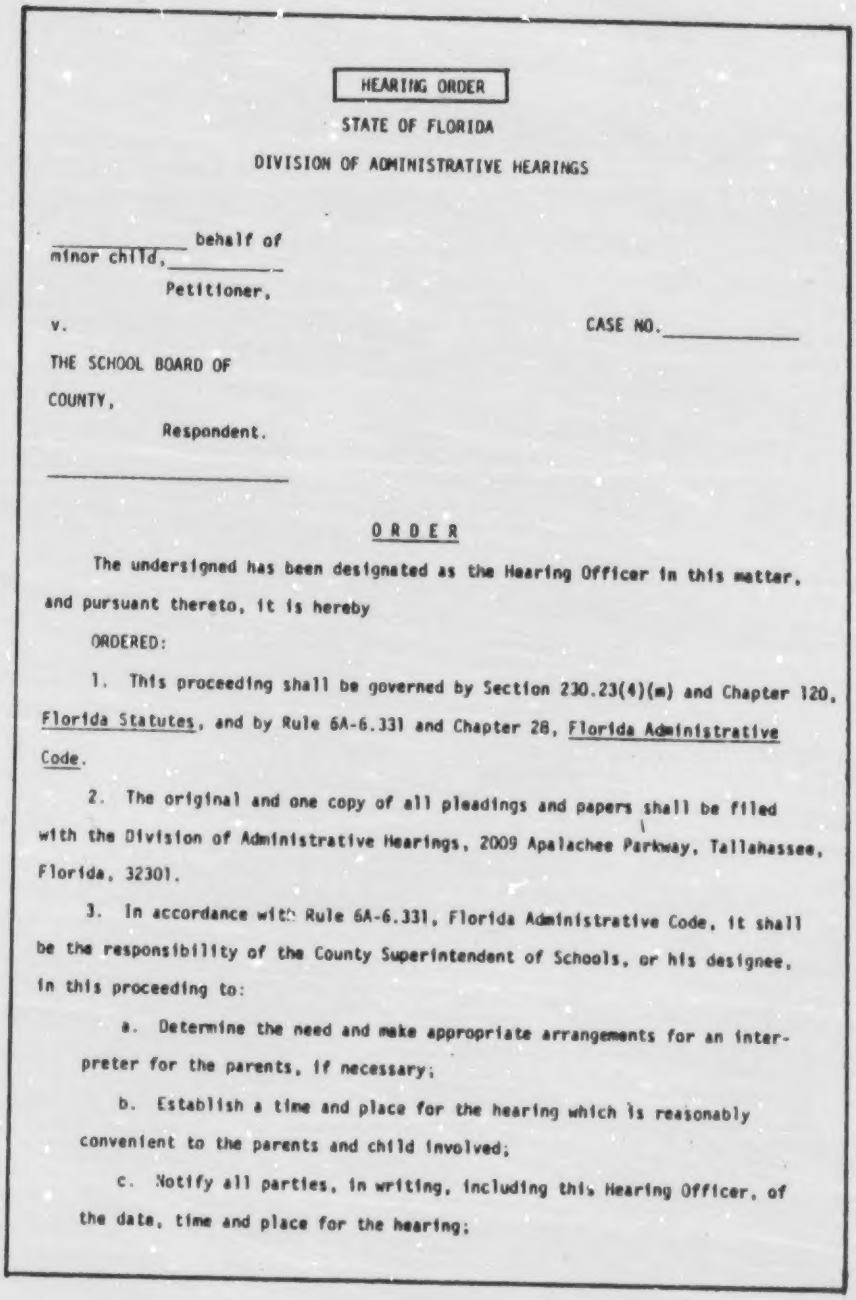
b) the State Statutes and Codes by which the hearing will be governed

c) the name and address where the original and one copy of all documents concerning the hearing are filed

d) the responsibilities of the LEA in arranging for the hearing

e) the right to object to the introduction of any evidence at the hearing which has not been disclosed at least five (5) days prior to the hearing

The following is an example of a hearing order.



HEARING ORDER

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

_____________ behalf of
minor child, __________
Petitioner,

v.   CASE NO. ____________

THE SCHOOL BOARD OF
COUNTY,
Respondent.

ORDER

The undersigned has been designated as the Hearing Officer in this matter, and pursuant thereto, it is hereby

ORDERED:

1. This proceeding shall be governed by Section 230.23(4)(m) and Chapter 120, Florida Statutes, and by Rule 6A-6.331 and Chapter 28, Florida Administrative Code.

2. The original and one copy of all pleadings and papers shall be filed with the Division of Administrative Hearings, 2009 Apalachee Parkway, Tallahassee, Florida, 32301.

3. In accordance with Rule 6A-6.331, Florida Administrative Code, it shall be the responsibility of the County Superintendent of Schools, or his designee, in this proceeding to:

a. Determine the need and make appropriate arrangements for an interpreter for the parents, if necessary;

b. Establish a time and place for the hearing which is reasonably convenient to the parents and child involved;

c. Notify all parties, in writing, including this Hearing Officer, of the date, time and place for the hearing;

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d. Arrange for clerical assistance, cost of hearing, availability of facilities, and a verbatim transcript of the hearing;

e. Notify all parties regarding information, rights, and responsibilities before, during and after the hearing;

f. Determine the parents' wishes concerning attendance of the child at the hearing;

g. Determine whether the parents wish the hearing to be open or closed to the public;

h. Make necessary arrangements and notify all parties should the parents wish the child to be in attendance at the hearing and/or the hearing to be open or closed to the public;

i. Make necessary arrangements to assure that the hearing is conducted and a final order entered within forty-five (45) days from receipt of the request for hearing as provided by Rule 6A-6.331(6)(c)(6), Florida Administrative Code;

j. Furnish copies of any rules or procedure for due process hearings adopted by the school board to the parents and this Hearing Officer at least five (5) days prior to the date set for the hearing.

4. All parties have the right to object to the introduction of any evidence at the final hearing which has not been disclosed to them at least five (5) days before the hearing.

Date

Hearing Officer
Division of Administrative
  Hearings
Address

The Order outlines the conditions and the procedures to follow for arranging for the hearing.

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ARRANGING FOR THE HEARING

Establishing a Date, Time, and Place

After consultation with the hearing officer and the parents or their representative, establish a date, time, and place for the hearing. The arrangements must be convenient for the parents and their child so they may participate in the hearing. An LEA district level conference room or a community facility may be used. The hearing officer may request that the hearing be held in a local courthouse.

Determining the Need for an Interpreter

Contact the parents to determine whether they need an interpreter to translate in their primary or native language. If an interpreter is necessary, arrangements must be made for his services at the hearing, at no cost to the parents.

Child Present

Although parents do have the right to request that their child be present during the hearing, exercising this right may prove to be detrimental. During the course of the hearing, the student's handicap(s), problems, impairments, etc., are openly discussed, and it may be more prudent not to have the student present. This information might be shared with the parents or parent representative in order to assist them in making the best determination.

Open/Closed Hearing

Parents have the exclusive right to have the hearing open or closed. An open hearing means that anyone can attend and observe. A closed hearing means that only those persons participating in the hearing (such as witnesses) or assisting the parties (attorneys, parent representatives) may attend. *Contact the parents to determine whether they wish to have the hearing open or closed.*

Record Keeping

The LEA must furnish a written or electronic verbatim record of the hearing to the hearing officer. Upon request, the parents may also have a copy of the record. *Appropriate arrangements must be made for accurately recording the hearing.* The simplest and most economical means for doing this is to tape record the proceeding. However, one disadvantage of using this method is that the speaker is unidentified. Another, but more costly, method is to make arrangements with a private conference reporting service to tape record the hearing. These services have a keying system which identifies the speaker. A third option is to have the hearing recorded by a private stenographic reporting service. The court reporter manually or mechanically takes the verbatim record of the hearing and transcribes it into a written verbatim record (called a transcript). Although this method is more expensive than tape recording, it is the most preferred because it provides a verbatim, written record.

Fees for professional recording services are costly but not prohibitive. Overall, it is more economical and efficient to have a written transcript available, especially for a reviewing officer (in the event of an appeal).

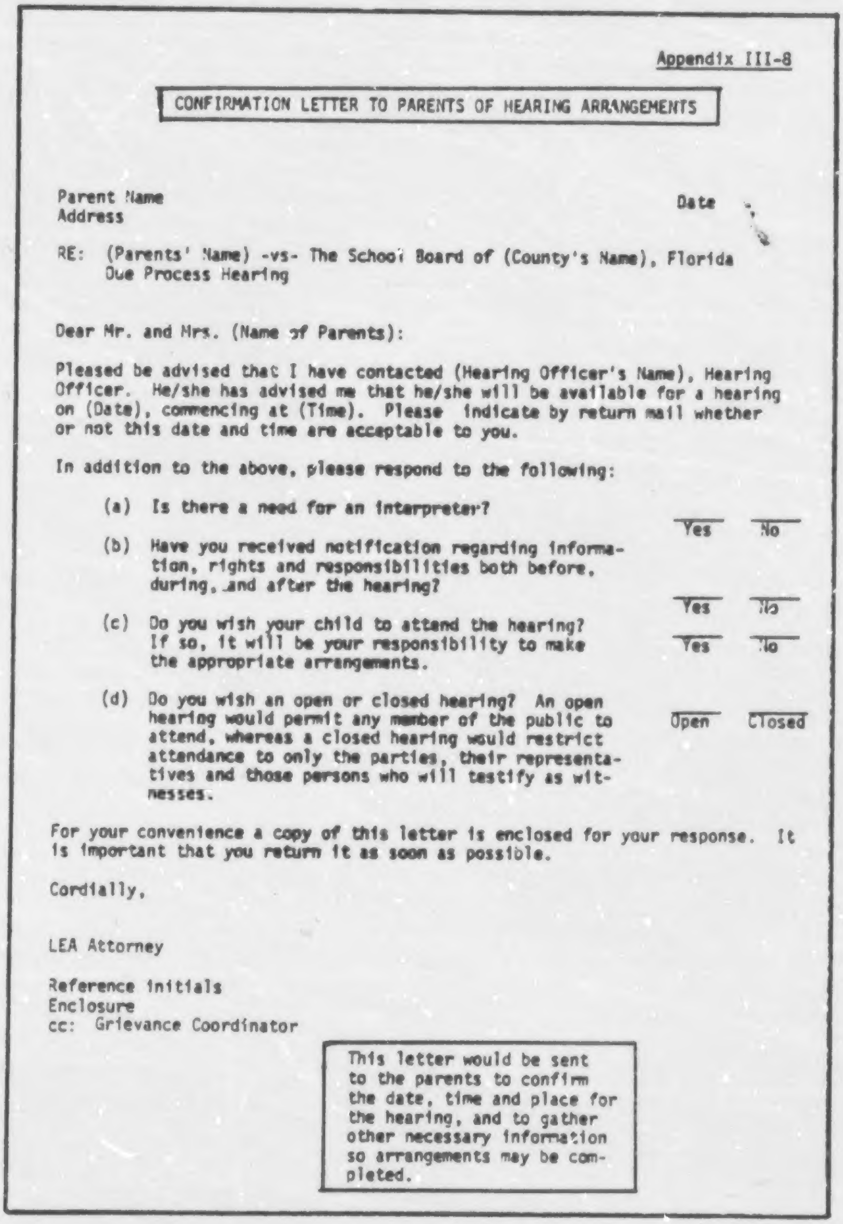
Room Arrangements

When making the physical arrangements for the hearing, considerations should be given to finding a location that is on "neutral territory" or mutually agreed upon by both parties. The location should have a room large enough to accommodate all participants and have comfortable seating. It should be sufficiently quiet to allow for tape recording by the stenographer or secretary. The availability of a copying machine and restrooms and refreshments should also be considered.

Confirming the Arrangements for the Hearing

Send a letter to the parents confirming the hearing arrangements; a response form letter should be included. Frequently, due to the time constraints of the hearing officer, lunch breaks may not be scheduled. This information might also be included in the confirmation letter or by a telephone call to the parents. The hearing officer must be advised of the arrangements. *Send a letter to the hearing officer confirming the hearing arrangements.*

The following is an example of a letter to the parents confirming the hearing arrangements.



CONFIRMATION LETTER TO PARENTS OF HEARING ARRANGEMENTS

Parent Name
Address

Date

RE: (Parents' Name) -vs- The School Board of (County's Name), Florida
Due Process Hearing

Dear Mr. and Mrs. (Name of Parents):

Pleased be advised that I have contacted (Hearing Officer's Name), Hearing Officer. He/she has advised me that he/she will be available for a hearing on (Date), commencing at (Time). Please indicate by return mail whether or not this date and time are acceptable to you.

In addition to the above, please respond to the following:

(a) Is there a need for an interpreter? ______ Yes ______ No

(b) Have you received notification regarding information, rights and responsibilities both before, during, and after the hearing? ______ Yes ______ No

(c) Do you wish your child to attend the hearing? If so, it will be your responsibility to make the appropriate arrangements. ______ Yes ______ No

(d) Do you wish an open or closed hearing? An open hearing would permit any member of the public to attend, whereas a closed hearing would restrict attendance to only the parties, their representatives and those persons who will testify as witnesses. ______ Open ______ Closed

For your convenience a copy of this letter is enclosed for your response. It is important that you return it as soon as possible.

Cordially,

LEA Attorney

Reference initials
Enclosure
cc: Grievance Coordinator

This letter would be sent to the parents to confirm the date, time and place for the hearing, and to gather other necessary information so arrangements may be completed.

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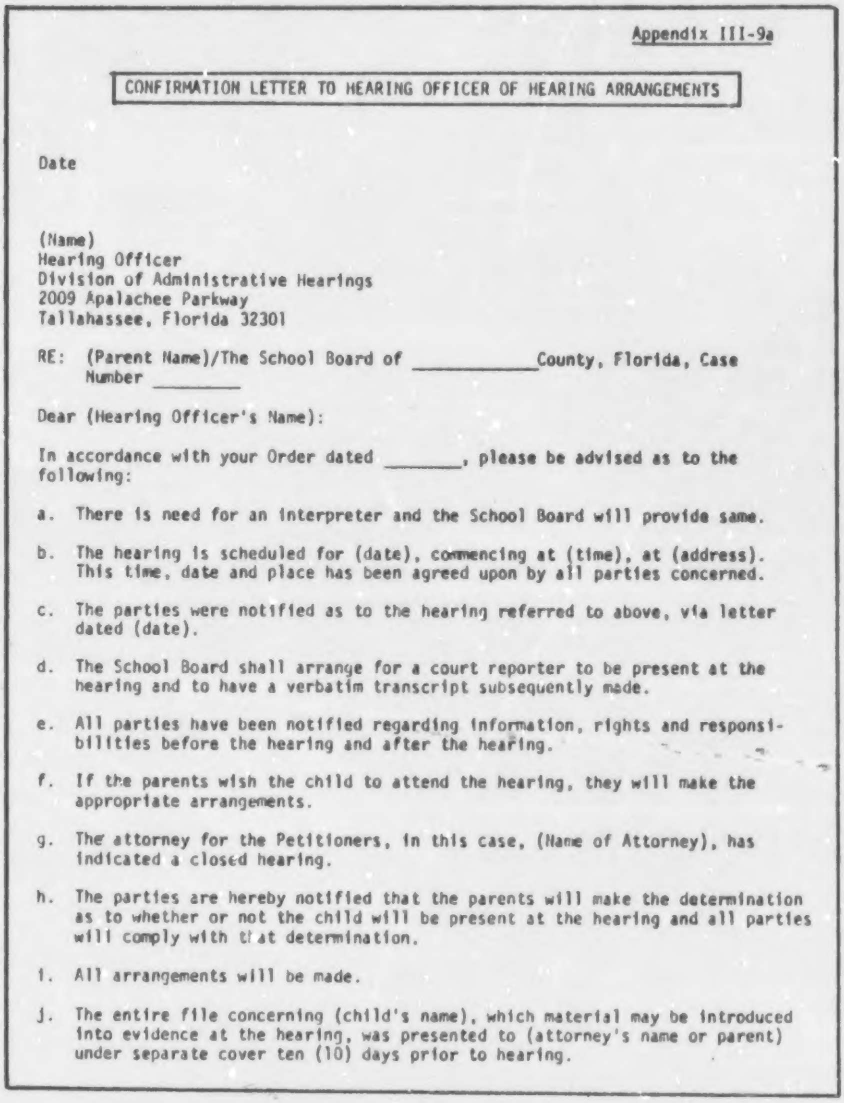
The following is an example of a letter to the hearing officer confirming the hearing arrangements.



Appendix III-9a

CONFIRMATION LETTER TO HEARING OFFICER OF HEARING ARRANGEMENTS

Date

(Name)
Hearing Officer
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301

RE: (Parent Name)/The School Board of ___________ County, Florida, Case Number _________

Dear (Hearing Officer's Name):

In accordance with your Order dated _______, please be advised as to the following:

a. There is need for an interpreter and the School Board will provide same.

b. The hearing is scheduled for (date), commencing at (time), at (address). This time, date and place has been agreed upon by all parties concerned.

c. The parties were notified as to the hearing referred to above, via letter dated (date).

d. The School Board shall arrange for a court reporter to be present at the hearing and to have a verbatim transcript subsequently made.

e. All parties have been notified regarding information, rights and responsibilities before the hearing and after the hearing.

f. If the parents wish the child to attend the hearing, they will make the appropriate arrangements.

g. The attorney for the Petitioners, in this case, (Name of Attorney), has indicated a closed hearing.

h. The parties are hereby notified that the parents will make the determination as to whether or not the child will be present at the hearing and all parties will comply with that determination.

i. All arrangements will be made.

j. The entire file concerning (child's name), which material may be introduced into evidence at the hearing, was presented to (attorney's name or parent) under separate cover ten (10) days prior to hearing.

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If there are any questions concerning the information set forth above, I request the Honorable (Hearing Officer) or (Attorney for Parents) to immediately notify me concerning same.

Sincerely yours,

LEA Attorney

Reference initials
cc: Parents or Attorney for Parents
Grievance Coordinator
LEA Personnel

This letter advises the Hearing Officer that arrangements have been made for the hearing.

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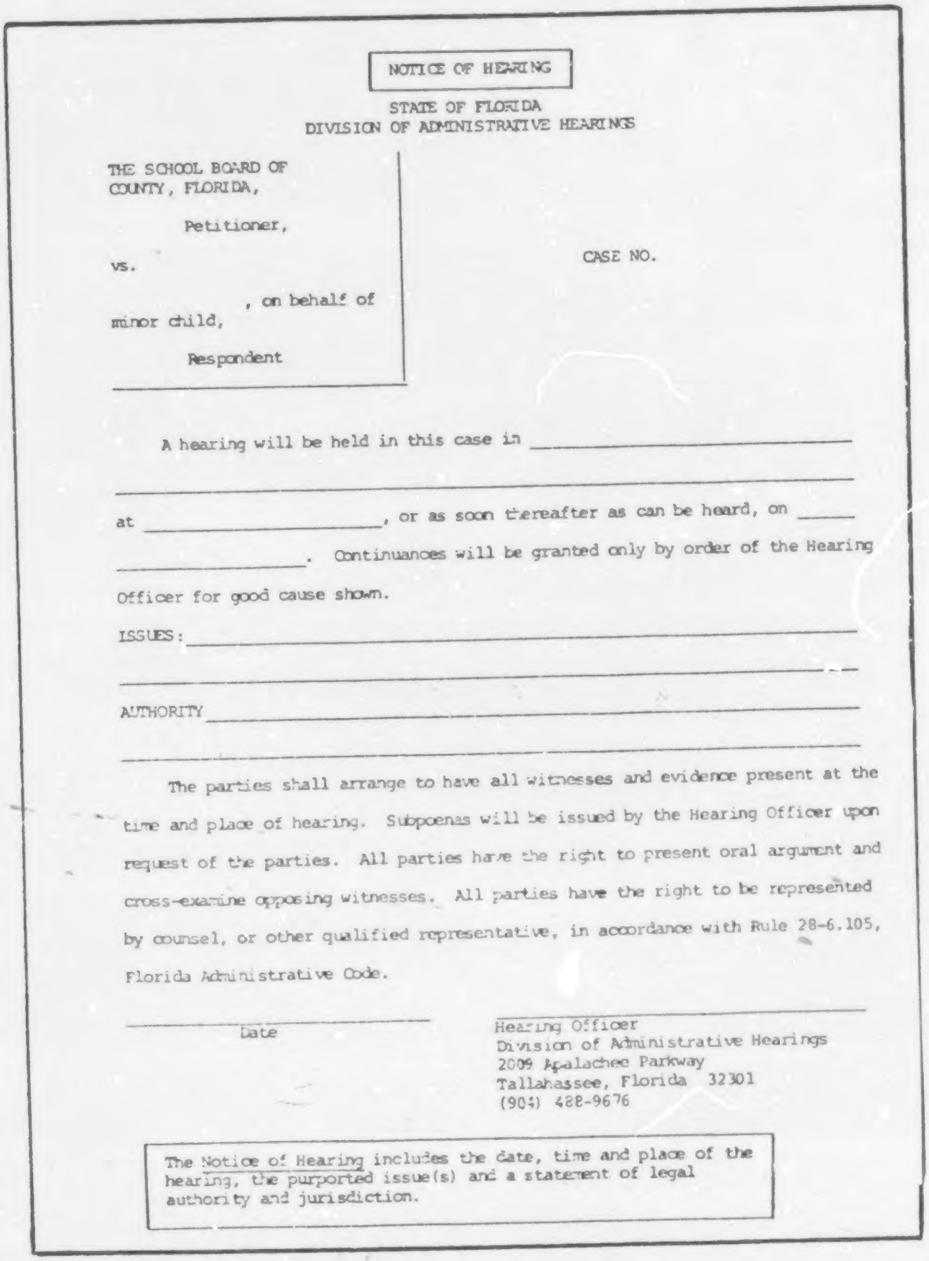
Notice of Hearing

After mutual agreement has been reached concerning the date, time, and place for the hearing, a Notice of Hearing is sent to both parties. The hearing officer may send the notice or request the LEA attorney to sent the notice.

The following is an example of a Notice of Hearing sent by the hearing officer.



NOTICE OF HEARING

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE SCHOOL BOARD OF
COUNTY, FLORIDA,

Petitioner,

vs. CASE NO.

, on behalf of
minor child,

Respondent

A hearing will be held in this case in ____________________________
____
at ________________, or as soon thereafter as can be heard, on ______
____________. Continuances will be granted only by order of the Hearing Officer for good cause shown.

ISSUES: ____
____

AUTHORITY ____
____

The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Hearing Officer upon request of the parties. All parties have the right to present oral argument and cross-examine opposing witnesses. All parties have the right to be represented by counsel, or other qualified representative, in accordance with Rule 28-6.105, Florida Administrative Code.

____
Date

____
Hearing Officer
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9676

The Notice of Hearing includes the date, time and place of the hearing, the purported issue(s) and a statement of legal authority and jurisdiction.

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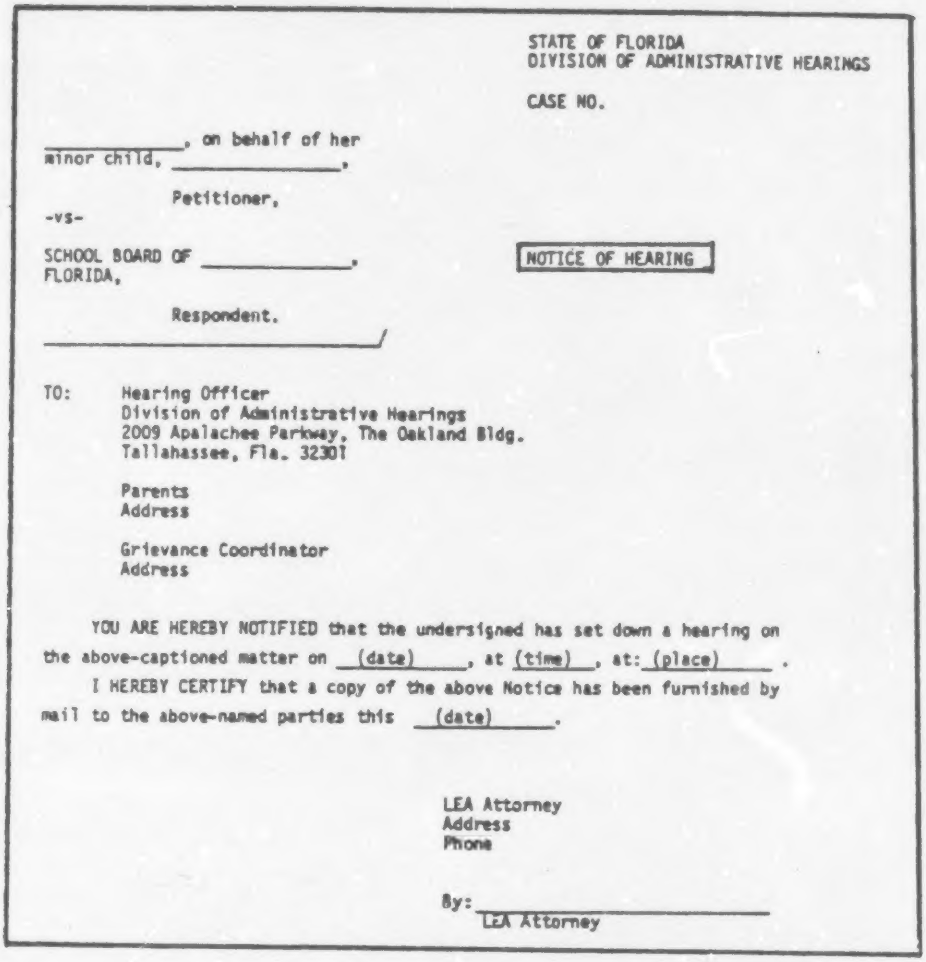
The following is an example of a Notice of Hearing sent by the LEA attorney.



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO.

____________, on behalf of her
minor child, ______________,

Petitioner,

-vs-

SCHOOL BOARD OF ____________,
FLORIDA,

Respondent.
_________________________/

NOTICE OF HEARING

TO: Hearing Officer
Division of Administrative Hearings
2009 Apalachee Parkway, The Oakland Bldg.
Tallahassee, Fla. 32301

Parents
Address

Grievance Coordinator
Address

YOU ARE HEREBY NOTIFIED that the undersigned has set down a hearing on the above-captioned matter on (date), at (time), at: (place).

I HEREBY CERTIFY that a copy of the above Notice has been furnished by mail to the above-named parties this (date).

LEA Attorney
Address
Phone

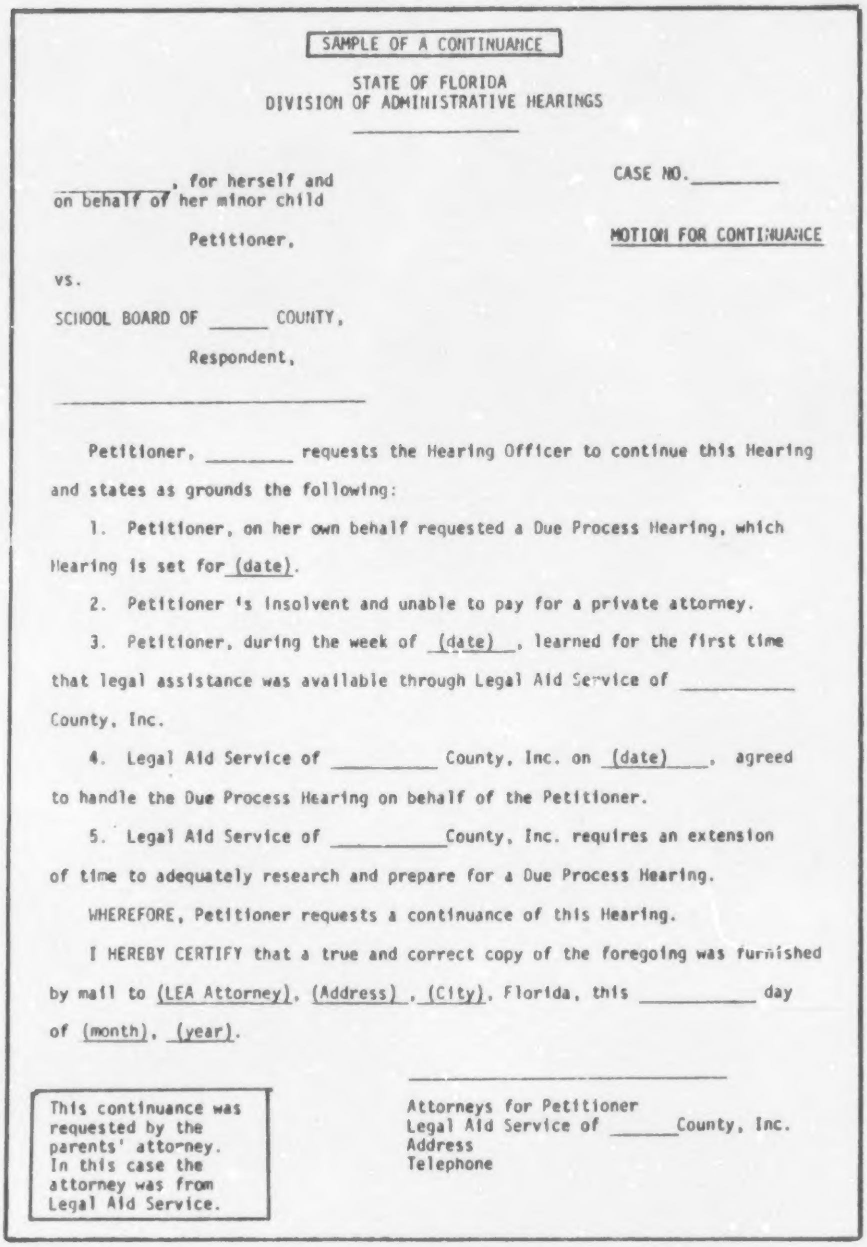
By: ______________________
LEA Attorney

CONTINUANCES/EXTENSIONS OF TIME

The hearing officer may grant an extension of time beyond the 45-day limit at the request of either party. An extension of time is called a continuance. A continuance requires that both parties agree to waive the 45-day time requirement.

Requests for continuances may be necessitated by the need for more preparation time, the unavailability of LEA personnel due to holidays and vacation periods, the mediation process, the parent securing counsel for the hearing, an independent evaluation, or any reason shown to be of good cause.

The following are examples of requests for an extension of time beyond the 45-day limit.



SAMPLE OF A CONTINUANCE

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

__________, for herself and
on behalf of her minor child

Petitioner,

vs.

SCHOOL BOARD OF _____ COUNTY,

Respondent,

CASE NO.________

MOTION FOR CONTINUANCE

Petitioner, ________ requests the Hearing Officer to continue this Hearing and states as grounds the following:

1. Petitioner, on her own behalf requested a Due Process Hearing, which Hearing is set for (date).

2. Petitioner 's insolvent and unable to pay for a private attorney.

3. Petitioner, during the week of (date), learned for the first time that legal assistance was available through Legal Aid Service of ___________ County, Inc.

4. Legal Aid Service of _________ County, Inc. on (date), agreed to handle the Due Process Hearing on behalf of the Petitioner.

5. Legal Aid Service of __________County, Inc. requires an extension of time to adequately research and prepare for a Due Process Hearing.

WHEREFORE, Petitioner requests a continuance of this Hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to (LEA Attorney), (Address), (City), Florida, this __________ day of (month), (year).

____

Attorneys for Petitioner
Legal Aid Service of ______County, Inc.
Address
Telephone

This continuance was requested by the parents' attorney. In this case the attorney was from Legal Aid Service.

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SAMPLE OF A CONTINUANCE

Date

The Honorable (Hearing Officer's Name)
Hearing Officer
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301

Regarding: The School Board of (County's Name) County -vs- (Parent's Name) for herself and on behalf of her minor child, (Child's Name) - Case No.______________

Dear (Hearing Officer's Name)

This is to confirm our telephone conversation of (date).

Counsel for both parties in the above case have stipulated to the following:

a. The case shall be continued to allow time to obtain an independent evaluation of the student. Counsel for Respondent will make every effort to obtain the same and provide a copy to the School Board within sixty (60) days.

b. The School Board has provided the requisite procedural safeguards to Ms. (Parent). Accordingly, the issues remaining involve the substantive classification and placement of the student.

Thank you for your cooperation.

Sincerely,

LEA Attorney

Reference initials

This continuance has a stipulation (condition in an agreement) between the LEA's and parent's attorney to obtain an independent evaluation of the child. In order to do this, the 45 days must be waived and an extension of time granted by the Hearing Officer. In this case an extension of at least 60 days was requested.

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REPRESENTATION

Choosing the LEA Representative

The LEA needs to determine who will be their spokesperson or representative during the hearing. In most instances, this person will be the LEA attorney. The grievance coordinator may work with the LEA attorney to prepare for the hearing. More than likely, the attorney will present the LEA's case during the hearing.

Parent Representation

The parents also need to determine who will be their spokesperson during the hearing. The parents may choose to represent themselves or to seek legal counsel. If the parents wish to be represented by another individual who is not an attorney, such as a local child advocate, that individual must present himself to the hearing officer for approval. The hearing officer will question the individual to determine his familiarity and experience with the following areas:

a) handicapped children and their educational needs

b) procedures used in due process hearings

c) federal and state laws and rules related to education of handicapped children

The hearing officer will then decide whether the individual possesses the knowledge and skills necessary to fairly and competently represent the parents' and the child's interests.

PREPARING FOR THE HEARING

Adequate preparation for the hearing by both parties is crucial to the hearing process. When both parties are fully prepared, the hearing will flow smoothly, and necessary information will be presented in an orderly fashion. This allows the hearing officer to make a well-informed decision in the best interest of the student.

P. L. 94-142 provides that either party has the right to be represented by counsel. Although legal representation is not mandatory, it is preferable. Since many legal rights are involved in a due process hearing, the parties can be greatly assisted with the aid of an attorney in the preparation and procedures of a hearing.

Preparation for the hearing involves gathering and organizing relevant data and information so that it can be presented during the hearing in a clean, concise, and competent manner; witnesses must be identified and prepared to give testimony.

Preparation by Parents

The parents will need as much assistance as possible to prepare for the hearing. Because a hearing is of a rather formal nature, parents may find the process overwhelming. They may also be ill-prepared for the hearing when not assisted or accompanied by a person(s) knowledgeable in these matters. It is strongly advised that the parents seek legal counsel. They should begin their preparation and develop a plan for presenting their case as soon as possible after a hearing request has been initiated. *A list of free or low-cost legal aid must be supplied by the LEA. This information should be automatically sent or given to the parents whenever a hearing is requested.*

Preparing Evidence

Any pertinent records and information that parents possess may be used as evidence. They may request access to their child's education records and make copies of anything in those records which would support their case. The LEA should honor such requests for records immediately. All evidence to be presented at the hearing must be exchanged with the LEA's evidence no later than five (5) days prior to the scheduled hearing.

The parents will need to:

a) organize their evidence

b) decide who they will call as witnesses

c) decide what testimony will be presented at the hearing

d) anticipate questions that will be asked of them and their witnesses and how those questions will be answered

e) prepare questions to ask of LEA witnesses concerning their testimony and the evidence presented by the LEA

f) decide whether the hearing will be open or closed

g) decide whether their child will be present at the hearing

h) check with their witnesses to be sure arrangements are clear

Many booklets and pamphlets have been published to assist parents in the preparation process. (Refer to Section V of this manual for further information.) If the parents have an attorney or representative, that person will probably assume much of the responsibility for these tasks.

Preparation by the LEA

There are many tedious and time-consuming tasks which need to be completed by the LEA in order to be adequately prepared for presenting its case. These tasks include:

a) gathering, sorting, and systematically organizing data and education records

b) systematically organizing the evidence into exhibits

c) determining the main issues

d) deciding their position on the issues

e) preparing witnesses for testimony

f) developing questions to ask of their witnesses

g) developing cross-examination questions

Gathering Data/Information

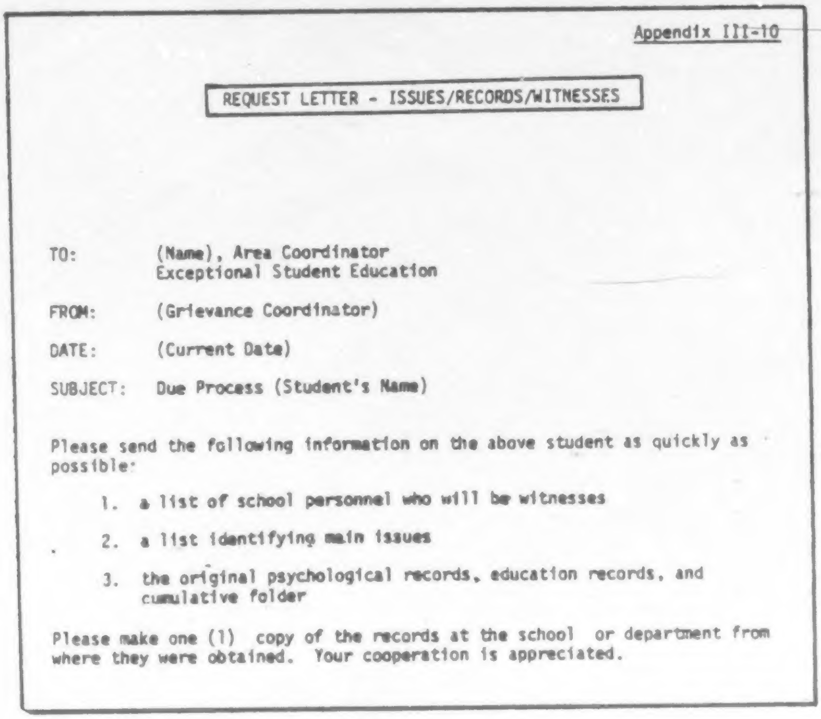
The grievance coordinator should call or send a letter to the appropriate LEA personnel requesting information about witnesses, issues, and education records. All of the student's education records must be located and gathered. These education records may include, but are not limited to, Category A and B directory information, cumulative records, psychological/psychiatric records, academic records, and outside agency records. The grievance coordinator should retain the originals, and a copy of the records should remain at the department, school, or facility from which the originals were obtained. The grievance coordinator should keep the original records until the conclusion of all proceedings.

Preparation for the case and the choice of witnesses are based upon the information contained in the student's education records. These records are used as evidence submitted at the hearing and upon which testimony is based. The hearing officer refers to them as well when making his decision.

Start with a review of the documents. If, in reviewing the records and issues, it is determined that the parents' procedural safeguards have been violated, then the LEA is vulnerable to being in noncompliance. The LEA should consider mediating the case and should correct the violated procedure(s).

If it is determined that procedural safeguards have not been violated but the issues revolve around a difference of opinion or outcome (e.g., is the student emotionally handicapped or learning disabled?), then the LEA needs to be flexible. Through mediation, some interventions or alternatives could be explored. Rather than proceed with a costly due process hearing, the purchase of an independent evaluation may solve the problem.

The following is an example of a request letter which would be sent to the appropriate LEA personnel involved in the hearing.



Appendix III-10

REQUEST LETTER - ISSUES/RECORDS/WITNESSES

TO: (Name), Area Coordinator
Exceptional Student Education

FROM: (Grievance Coordinator)

DATE: (Current Date)

SUBJECT: Due Process (Student's Name)

Please send the following information on the above student as quickly as possible:

1. a list of school personnel who will be witnesses
2. a list identifying main issues
3. the original psychological records, education records, and cumulative folder

Please make one (1) copy of the records at the school or department from where they were obtained. Your cooperation is appreciated.

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The following are examples of response letters from LEA personnel regarding issues and witnesses.

RESPONSE LETTER-ISSUES

TO: Grievance Coordinator

FROM: (Name) Area Coordinator/ESE

DATE: (Current Date)

SUBJECT: (Student's Name) - ________________ School

The issues regarding the due process case relative to the above captioned student are as follows:

1. Following the appropriate district procedures the Staffing Committee has recommended an exceptional student education placement for (Student's Name).
2. (Parent's Name) refuse to grant consent for placement and do not feel that (Student's Name) is in need of an exceptional student education program.

If I can be of further assistance in this matter, please do not hesitate to call me at (phone).

Reference initials
cc: Area Superintendent
Principal

RESPONSE LETTER - WITNESSES

TO: Grievance Coordinator

FROM: (Name) Exceptional Student Education Area Coordinator

DATE:

SUBJECT: (Student's Name) - ____________School

The following personnel are recommended to serve as witnesses in the due process proceedings relative to the above captioned student:

If I may be of further assistance in this matter, please do not hesitate to call me at (phone)________.

(Reference initials)
cc: LEA Attorney
Area Superintendent
School Principal
ESE Teacher
Regular Classroom Teacher
School Psychologist
Guidance Counselor

This response letter identifies personnel who may be witnesses at the due process hearing.

Sorting and Organizing the Data

The documents may be organized chronologically into categories. Categories will vary, as will the number of documents, depending on the individual case. The categories might include but are not limited to:

a) referral/parental consent

b) procedural safeguards, i.e., notice, consent, etc.

c) tests and evaluations

d) individual educational plan(s)

e) educational data

f) grades/progress reports

g) cumulative folder/health record

h) correspondence

i) observations, anecdotal reports

j) conferences

k) work samples

After the determination of categories has been made, arrange the records in chronological order within each category. Make as many copies as necessary (generally six or seven copies) of all the sorted records. One copy will be used as a "working copy" in preparing evidence. Other copies will be distributed to parents, their representative, LEA attorney, witnesses, and the hearing officer (hold until the hearing).

Make a "cover sheet" for each category. The cover sheet should identify the documents within, the information provided by each document, and the date the documents were generated. *After all the documents have been organized, place this "working copy" of the records in a loose-leaf ring binder.* Use the cover sheets as dividers and index-tab the cover sheets for easy reference.

The information contained on each cover sheet is then used to compile a chronological appendix. The appendix provides a sequenced and fairly comprehensive educational history of the student. It assists in assessing which documents will be used as exhibits.

Preparing Evidence

Familiarity with federal and state rules, regulations, and laws is invaluable when preparing evidence for the hearing. Issues will vary, as will the types and kinds of information needed to show that the LEA is in compliance with the law. It must be determined whether:

a) all the parents' and student's procedural safeguards were provided

b) District Procedures were correctly followed

c) an appropriate program was offered

d) the student was properly screened, evaluated, and placed

e) the student's IEP was properly developed

f) the proposed placement is in the least restrictive environment

Determine which documents provide the most information and will be used as evidence for the hearing in order to obtain a favorable ruling. In addition to education records, photographs, moving pictures, and video tapes may also be used as evidence. *The selected evidence should be marked for easy identification for the hearing.* They become what is known as "exhibits." Order and identify the exhibits by numeral or letter, or a combination of both, i.e., Exhibit A or Exhibit A-7, Screening Form. Assign page numbers to each exhibit, if practical. *Compile an index of exhibits.* This index may include the exhibit number or letter, the subject matter, and the page number (if the exhibit is a document). The index may be lengthy, depending on the individual case.

The following is an example of a cover sheet. This cover sheet provides information on each document within a category and the date of its generation. The person or agency generating the document may also be listed.

COVER SHEET

Procedures

Enrollment Form for Hearing Impaired Program	--
Parents' Acceptance Form	9/25/72
Information Sheet by ESE	9/25/72
Standard Record Form/Hearing Impaired Students	9/25/72
Exceptional Student Eligibility & Placement Form	6/76
Notice of Program Assignment or Reassignment	1/9/76
Student Assessment and Review Committee Form	6/4/76
Notice of Program Assignment or Reassignment	6/7/76
Exceptional Student Eligibility & Placement Form	6/77
Notice of Program Assignment or Reassignment	3/28/77
Exceptional Student Eligibility & Placement Form	3/23/77
Student Assessment and Review Committee Form	6/1/77
Student Assessment and Review Committee Form	6/14/77
Exceptional Student Eligibility & Placement Form	11/16/77
Exceptional Student Eligibility & Placement Form	11/16/77
Exceptional Student Eligibility & Placement Form (copy)	11/16/77
Notice of Program Assignment	12/1/77
Letter to Parents re Academic Tutoring Program	2/20/78
Notice to Parents re Conference Participation	5/11/78
Notice of Program Assignment	6/8/78
Parents Acceptance Form re Program Assignment	6/8/78
Notice of Program Assignment	6/8/78
Parents Acceptance Form re Program Assignment	6/8/78
Hearing, Screening and Referral Form	12/14/78
Hearing, Screening and Referral Form (copy)	12/14/78
Parent Participation Form	5/21/79
Parent Participation Form	9/28/79
Eligibility & Program Placement Form	10/3/79
Parent Participation Form	5/16/80
Parent's Authorization to Release Medical Records	12/5/80

The following is an example of a chronological appendix. This appendix is compiled by using the information contained in the categorical cover sheets.

Chronological Appendix

1. **Screening**

Screening Form--EH Teacher	5/29/79
Neurologic consultants--Independent evaluation	1/18/79
Referral Form, D&R--Request for Diagnostic Services, School	11/28/78

* * * * * * *

2. **Procedures**

Individual Education Program, Formal Review	4/24/80
Parent Participation Form	4/21/80

* * * * * * *

3. **Tests and Evaluations**

Wide Range Achievement Test--School Psychologist	3/5/80
Neurologic Evaluation--Independent evaluation	1/18/79
D&R, Appointment Notice for Testing	5/1/79

* * * * * * *

4. **Educational Data**

Pupil Progress Report	1979/80
Work Samples	1/80 to 3/80
Pupil Progress Report--EH Teacher	2/25/80
Minimum Basic Skills Checklist--Math, EH Teacher	

* * * * * * *

5. **Teacher**

Anecdotal Reports	9/17/79 to 2/12/80
Correspondence--Teacher to parents	11/8/78
Observation	9/15/78

* * * * * * *

6. **North Area Observations and Correspondence**

Observation--Program Monitor	5/15/80
Observation--School Psychologist	5/12/80
Observation--School Psychologist	3/4/80

* * * * * * *

7. **Parents**

Release of Records	1/16/79
Correspondence, Request for Reports--Private School	2/23/78
Correspondence--Past School District	2/17/78

* * * * * * *

8. **Principal**

Parent Conference	9/7/78

* * * * * * *

The following is an example of an index of exhibits. It is compiled by selecting documents and other data which will be used as evidence for the hearing.

INDEX OF EXHIBITS

EXHIBIT NUMBER	SUBJECT MATTER	PAGE NUMBERS
1	Consent for Formal Individual Evaluation	1
1A	Procedural Safeguards	2
2	Consent for Formal Individual Evaluation	3
2A	Procedural Safeguards	4
3	Referral for Psychological Consultation	5 & 6
4	Parent Information Survey	7 - 10
5	Release of Records	11
5A	Release of Records	12
5B	Release of Records	13
5C	Release of Records	14
5D	Release of Records	15
6	Psychological Evaluation	16 - 18
6A	Social Analysis	19 & 20
6B	Educational Evaluation	21
6C	Psychological Evaluation	22 - 23
6D	Psychological Evaluation	24 - 27
6E	Child Psychiatric Evaluation	28 - 32
6F	Psychological Evaluation	33 - 35
6G	Psychological Evaluation	36 - 38
6H	Neurological Evaluation	39 & 40
7	Evaluation of Hearing Acuity/Evaluation	41
8	Telebinocular Visual Screening Test	42 & 43
9	Wide Range Achievement Test	44 - 47

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Preparation for the Presentation of the Case

As mentioned previously, the grievance coordinator and LEA attorney may work together to prepare the case for presentation at the hearing. The grievance coordinator may assist the attorney to do the following:

a) prepare a list of possible questions to be asked of each major witness

b) make description cards concerning each witness (described below)

c) prepare an order of witness testimony (described below)

d) anticipate the arguments that may be presented by the parents

e) develop cross-examination questions related to the arguments

Description Cards

In order for the LEA attorney to effectively present the LEA's case, he needs to have specific information about the LEA's witnesses. The attorney needs to know the witnesses' specific job description and area(s) of certification. Based upon this information, the witnesses will be asked to testify regarding their professional responsibilities. *Prepare note cards or cue cards which contain this information.*

Order of Witness Testimony

The presentation of the LEA attorney is organized to demonstrate that the school system was in compliance with all procedural safeguards, policies, and procedures. This is often accomplished by the sequence in which witnesses are called upon to testify.

The order of witness testimony is a listing which indicates the specific order in which individuals will be called upon to testify. The order of testimony should contain the witnesses' names and job titles and outline the key points about which they will be questioned (e.g., information about their job responsibilities, educational background, their activities with respect to the educational program for the student for whom the hearing is being held, etc.).

Most often, the sequence of witnesses begins with the individual who has the ultimate administrative responsibility for the implementation of the LEA's District Procedures document, the Director of Exceptional Student Education or his designee. Questioning of this individual usually establishes that the LEA demonstrated compliance with all procedural safeguards. Additional witnesses are called upon in a sequence which parallels the sequence of events documented in the student's educational records. *Prepare an order of witness testimony for the hearing.*

The following is an example of the order of witness testimony. It contains information which indicates the order in which witnesses will be called to testify, as well as specific information that may be asked of each witness.

ORDER OF WITNESS TESTIMONY

1. Principal -

   Educational background
   Florida Certificate
   School Board job description
   District Procedures
   Screening procedures
   Parent permission
   Parent participation
   Parent conference
   Eligibility and Placement procedures
   Eligibility and Placement recommendations

2. Area Coordinator - Psychological Services -

   Educational background
   Florida Certificate
   School Board job description
   Relationship to school psychologist
   Reviewed all procedures as they relate to eligibility, staffing, and program placement
   Reviewed test battery - test administration
   Supports recommendations (school psychologist)
   Observations
   Individual Education Program

3. Guidance -

   Educational background
   Florida certificate
   School Board job description
   District Procedures
   Screening procedures
   Parent permission
   Parent participation
   Parent conference
   Eligibility and Placement procedures
   Eligibility and Placement recommendations
   Testing
   Academic progress - PPP
   Correspondence/Documentation
   Individual Education Program
   Observations

Preparation by the Hearing Officer

After a hearing officer is assigned to a case, he must become acquainted with the general nature of the case. The hearing officer should:

a) have a copy of the hearing request

b) maintain impartiality by not discussing the case with either party

c) withdraw from the case if a conflict of interest is suspected

d) be familiar with federal, state, and local rules, laws, statutes and guidelines relative to special education due process hearing procedures

e) become familiar with the LEA's District Procedures documents for the delivery of education services

f) be acquainted with the complaint procedures at both the state and local level

g) check with the grievance coordinator/LEA attorney to confirm that all appropriate arrangements have been made

h) send both parties a written outline (the Hearing Order) stating the procedures to be used prior to, during, and after the hearing

Information for the Hearing Officer

A packet of information should be prepared for the hearing officer. This packet should include:

a) the LEA's District Procedures document(s) covering each year in question

b) copies of the student's education records

c) a chronological appendix

d) a list of witnesses

e) an order of witness testimony

f) a list of exhibits

This information should be given to the hearing officer at the hearing, not before.

WITNESS ROLE AND RESPONSIBILITIES

Witnesses for the Hearing - Role and Responsibilities

The function of a witness is to give testimony related to the exhibits introduced as evidence. It must be determined which LEA personnel, experts, and other persons knowledgeable about the student will be called upon to be witnesses. Select only as many witnesses as needed to present the essential facts for the record. Persons selected as witnesses should have first-hand knowledge of the student and the issues involved in the case.

Witnesses should be notified of the date, time, and place for the hearing. They should also arrange for their own transportation, substitute teachers (if necessary), lunch, etc., for the duration of the hearing, which is usually one full day. Inform witnesses that due to the time constraints of the hearing officer, a lunch break may not be scheduled.

Prehearing Witness Meeting

A meeting should be arranged for the preparation of witnesses. Persons attending this meeting include the LEA's witnesses, LEA attorney, and the grievance coordinator. The grievance coordinator and attorney should conduct the meeting, which should be scheduled approximately a week to ten days prior to the scheduled hearing date. The purpose of this meeting is to inform the witnesses of:

a) hearing procedures

b) what to expect at the hearing

c) what will be expected of them

d) the questions that might be asked of them

e) how to respond to questions

f) how their testimony is related to the exhibits

g) the responsibilities and parameters by which they will testify

Prior to this meeting, the grievance coordinator or the attorney should summarize the case in writing. From this summarization, any inconsistencies that have been noted in the review of the education records should be discussed with witnesses (e.g., witnesses may be misleading in their own perceptions of the student as compared to what is documented in the student's records). Witnesses need to use the same terms and language as recorded in the records, agree on the issues, problems, and concerns, and be consistent in their testimony.

An information packet should be prepared and distributed to witnesses at the meeting. This information should include:

a) informative articles, booklets, or pamphlets regarding due process hearings, especially the role of a witness

b) a copy of their LEA approved job description

c) a copy of the chronological appendix

d) a copy of the order of witness testimony

The attorney should prepare the witnesses for their testimony. The credibility of witnesses is established by identifying their employment status, educational background, and job description. This process builds the basis on which LEA personnel have the responsibility and authority to make educational decisions. The hearing procedure follows the District Procedures document, verifying through testimony and evidence, that the LEA is in compliance. Witnesses should be prepared to:

a) state their professional credentials, certification, and training

b) state their experience relative to their position, title, and current status in the educational system of the student in question

c) know their LEA job description and be able to verbally relate how it applies to the day-to-day educational process

d) make statements about the unique needs of the student

e) explain terms specific to the educational process

f) bring any documents or supportive information that may be helpful and refer to them during their testimony

g) know what is contained in the student's education records about which they may be asked questions

h) answer any questions that relate to the student's records

i) anticipate questions about their evidence and testimony and be prepared to answer those questions

In addition, witnesses who have evaluated the student should be prepared to:

a) discuss the kinds of evaluation instruments and methods used in arriving at the conclusions concerning the student's academic and behavioral abilities

b) discuss the reliability and validity of evaluative materials used

c) bring test manuals in order to support that scoring and test interpretation was in accordance with the producer's directions

Witnesses must deal with the student's total educational record and the total educational history of the student. They should be given copies of the education records about which testimony will be given. They should review and become familiar with the records and the District Procedures document prior to the hearing.

LEA Personnel as Witnesses for the Parents

LEA personnel may be called as witnesses by either the parents or the LEA. An employee of the LEA who has been requested to serve as a witness for the LEA has a professional responsibility to do so. On occasion, personnel's views differ from that of the LEA. If parents are aware of this, they may request LEA personnel to serve as witnesses on their behalf. The LEA should facilitate such a request, understanding that this can become a delicate situation for the witness who would be testifying against the agency that employs him. LEA's must be careful that there is no intentional/unintentional retaliation regarding an opposing witness' status as an employee.

Paid Consultants

Persons who are paid professionals, or are being paid for expenses to appear at the hearing, are considered to be paid consultants. Either party may use paid consultants as their witnesses.

Expert Witnesses

An expert witness is a person who by reason of education or specialized experience possesses superior knowledge about a subject. The hearing officer has wide discretion in determining if a witness is an "expert." An expert witness can draw conclusions, offer opinions, and answer hypothetical questions. Either party may have expert witnesses.

Expert witnesses should receive the same mileage and per diem rate as would a witness in a civil case in the circuit court of the county where the hearing is held. There is no legal authority for the reimbursement of lost salary. A guideline for reimbursement would be to comply with the established statutory requirements of reimbursement for school board business. If the hearing officer deems it necessary to call in an expert witness, compensation above the per diem and mileage of regular witnesses might be necessary. If the expert witness is called to testify for one of the parties, the burden of payment would fall on the contesting party.

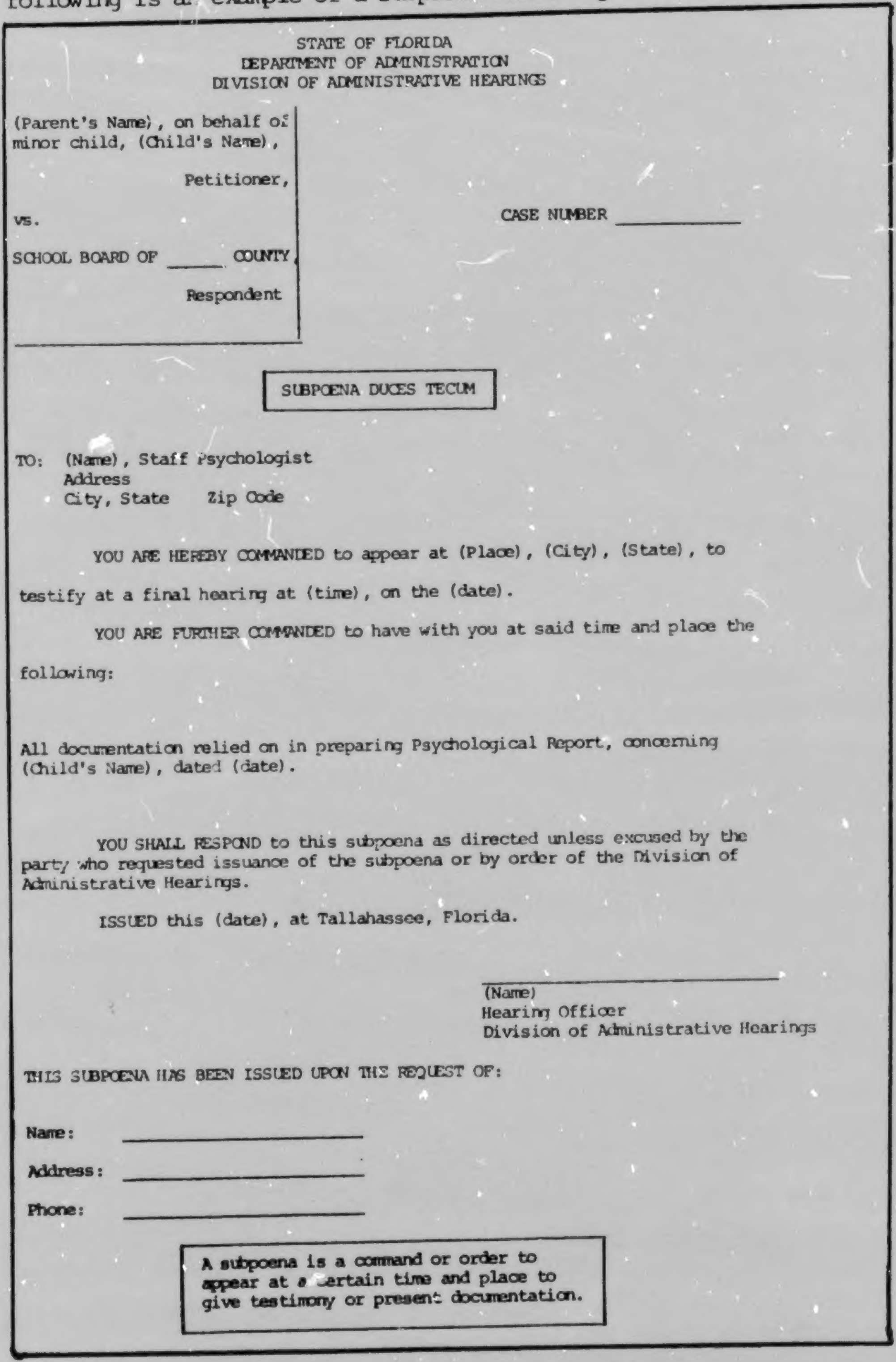
Depositions

A deposition is the testimony of a witness taken prior to a hearing. Depositions may be taken by attorneys in order to mediate a case or may be used to identify and narrow the issues for the hearing.

Subpoena

A subpoena is a written order whereby a person is commanded to appear as a witness or must provide a relevant document(s). The hearing officer will issue a subpoena upon request and for good cause shown, i.e., the testimony or document is important to material issues at the hearing.

The following is an example of a subpoena issued by a hearing officer.



STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATION
DIVISION OF ADMINISTRATIVE HEARINGS

(Parent's Name), on behalf of
minor child, (Child's Name),

Petitioner,

vs.

SCHOOL BOARD OF ______ COUNTY,

Respondent

CASE NUMBER ____________

SUBPOENA DUCES TECUM

TO: (Name), Staff Psychologist
Address
City, State Zip Code

YOU ARE HEREBY COMMANDED to appear at (Place), (City), (State), to testify at a final hearing at (time), on the (date).

YOU ARE FURTHER COMMANDED to have with you at said time and place the following:

All documentation relied on in preparing Psychological Report, concerning (Child's Name), dated (date).

YOU SHALL RESPOND to this subpoena as directed unless excused by the party who requested issuance of the subpoena or by order of the Division of Administrative Hearings.

ISSUED this (date), at Tallahassee, Florida.

(Name)
Hearing Officer
Division of Administrative Hearings

THIS SUBPOENA HAS BEEN ISSUED UPON THE REQUEST OF:

Name: ______________________

Address: ______________________

Phone: ______________________

A subpoena is a command or order to appear at a certain time and place to give testimony or present documentation.

DISCLOSURE OF INFORMATION

Disclosure is the revelation of the documents which may be introduced as evidence at the hearing. This information must be disclosed at least five (5) days prior to the hearing.

Parties have the right to object to the introduction of any evidence at the hearing not previously disclosed; and the evidence may not be admitted during the hearing, unless the hearing officer deems the evidence material and relevant.

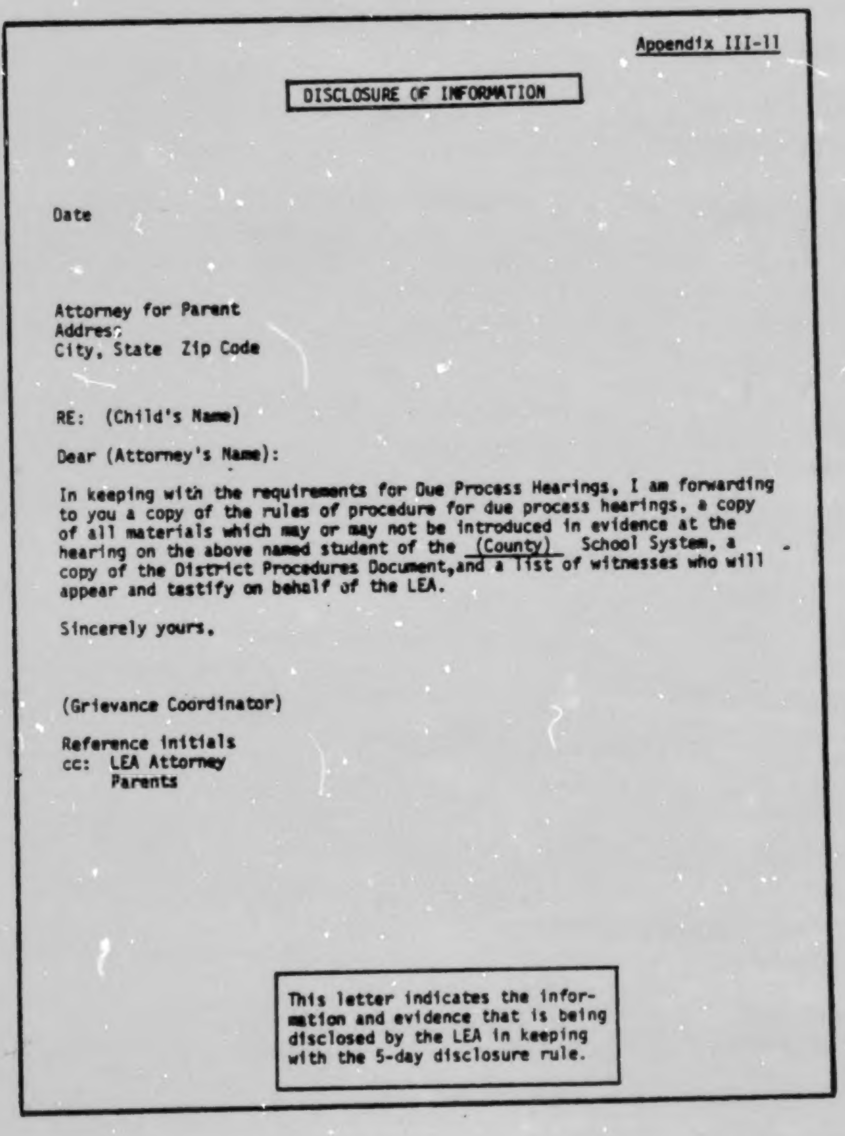
The parents or their representative should be given a complete copy of the child's education records, although all the records may not be submitted as evidence at the hearing. A list of witness names and a copy of the District Procedures document(s) should also be given to the parents.

PREHEARING CONFERENCES

The hearing officer or either party may request a prehearing conference in those cases when it is practical to do so. The purpose of such a conference is to clarify information that may be confusing and eliminate that which is irrelevant.

The hearing officer may require that the LEA and parents meet and prepare a stipulation (a reduction in writing) identifying the issues and the evidence; or the hearing officer, LEA, and parents might meet to discuss this information. This conference would take place prior to the hearing; the time span may be from two (2) weeks to just prior to the hearing. This conference is advisable although it is not always practical or feasible, due to increased costs, i.e., time, travel, and fees. *It is the responsibility of the LEA to make the necessary arrangements for the prehearing conference and confirm the arrangements with the hearing officer and the parents.*

The following is an example of a letter sent to the parents' attorney concerning evidence that may be used at the hearing.



DISCLOSURE OF INFORMATION

Date

Attorney for Parent
Address
City, State Zip Code

RE: (Child's Name)

Dear (Attorney's Name):

In keeping with the requirements for Due Process Hearings, I am forwarding to you a copy of the rules of procedure for due process hearings, a copy of all materials which may or may not be introduced in evidence at the hearing on the above named student of the (County) School System, a copy of the District Procedures Document, and a list of witnesses who will appear and testify on behalf of the LEA.

Sincerely yours,

(Grievance Coordinator)

Reference initials
cc: LEA Attorney
Parents

This letter indicates the information and evidence that is being disclosed by the LEA in keeping with the 5-day disclosure rule.

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THE HEARING

A hearing has several distinct phases or stages. The first stage is prehearing activities. The second stage, hearing activities, contains within it a preliminary stage, opening statements, identification of representatives, presentation of each party's case, testimony, rebuttals, and closing statements. The third stage involves posthearing activities.

PREHEARING ACTIVITIES

Upon arrival at the appointed place, the hearing officer will probably:

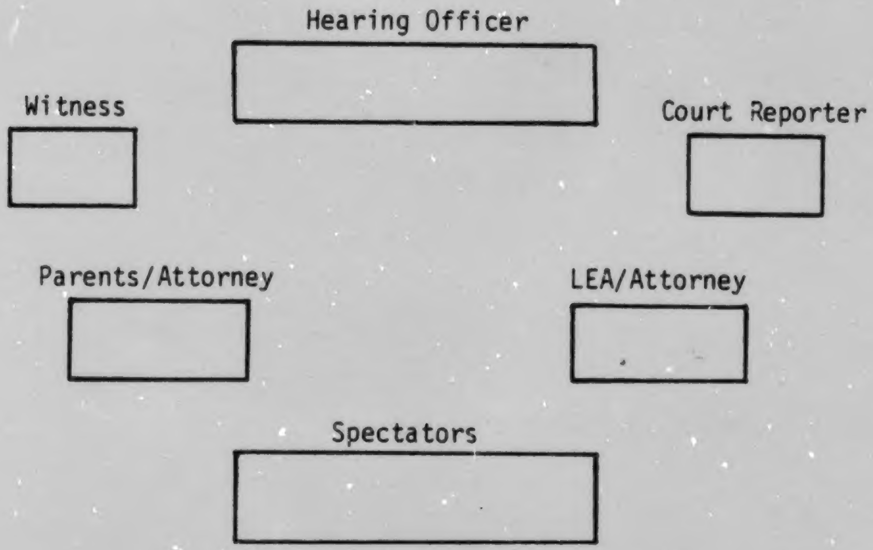
a) check whether all necessary arrangements have been made for the hearing

b) greet participants as they arrive and indicate where they should sit--usually, LEA personnel are seated on one side of a conference table(s), with the parent group on the opposite side

c) select a seat at one end of the table

d) have the person recording choose the place he has determined to be the best for recording purposes

A typical seating arrangement might be:



HEARING ACTIVITIES

Preliminary Matters

The hearing officer will be in complete control of the hearing. It is his responsibility to ensure that the hearing is orderly and that the proceeding serves its intended purpose. There are a number of preliminary matters that need to be addressed. The hearing officer will introduce himself, make an introductory or opening statement which specifies the rules and format for the hearing, and request that persons representing each party be identified for the record. Only one spokesperson may represent each party; this person will state his name, whom he represents, and his address.

It is the responsibility of the hearing officer to consider any preliminary matters in need of resolution, such as any objections by the parties on the five-day disclosure of evidence rule; whether there are stipulations or agreements between parties (such as procedural matters, the diagnosis of the student, etc.). This should be stipulated so the real issues can be dealt with directly. The hearing officer will briefly summarize the purpose of the hearing and the issue(s). He will swear in witnesses. Witnesses may be sworn in as a group, lending a tone of seriousness to the proceedings. He will determine whether the hearing is open or closed by questioning the parents; if closed, only the parties, their representatives, and witnesses may remain. The hearing officer will ask all other individuals to leave. Either party may request that the hearing officer "invoke the rule," which excludes all witnesses from the room. Witnesses should be instructed to remain nearby and be ready to be called in singly to testify. The hearing officer may request that witnesses be sequestered (separated or isolated from contact with each other). Once preliminary matters are resolved, the hearing officer is ready to hear the case.

Opening Statements

Opening statements are not considered to be evidence; they serve to allow the parties to begin their statements on a more informal, less stressful basis, and identify the issues as seen by each side.

Each party will be given an opportunity to make an opening statement summarizing the issue(s). Generally, the petitioner (party requesting the hearing) presents first; however, this order may be altered.

The opening statement made by the LEA spokesperson should include a short summary of activities of the LEA with which the parents disagree and on which the hearing request was based, the reasons for the LEA's decisions and actions, and the general approach that will be taken to support the appropriateness of the LEA's decisions and actions.

An opening statement will be made by the parent spokesperson stating the position of the parents regarding the decisions and actions of the LEA, the reason for their position and concerns, and the general approach they will take to support the appropriateness of their position.

Presentation of Evidence and Testimony

The hearing officer will designate which party will proceed first in presenting evidence. Evidence includes the testimony of witnesses and supportive documents and data.

The LEA spokesperson should present official reports to be entered as evidence, the District Procedures document, and a list of witnesses in the order they will be called for testimony (the packet of information as prepared prior to the hearing). The parent spokesperson will present his evidence.

The hearing officer will check evidence and witnesses for full disclosure (five-day disclosure rule). All evidence (exhibits) should be labeled as they are presented during the hearing process for easy reference later.

Only evidence with a bearing on the case should be submitted. Evidence should not be repetitive and redundant, but should be believable and reliable. The hearing officer may not admit evidence if it is immaterial or irrelevant.

Presentation of the LEA's Case

The LEA spokesperson will submit the evidence and verbally give the school history of the student. Witnesses may be called to give verbal testimony. The hearing officer usually indicates where the witness is to sit while giving testimony. The witness would be sworn in if not done previously. The testimony given should be substantiated by the evidence.

The LEA spokesperson will elicit testimony from the witnesses through questioning. Witnesses should testify only about matters for which they have first-hand information. Upon conclusion of the testimony, the witness may be asked questions (cross-examined) by the parent spokesperson.

The hearing officer has the authority to ask questions of any witness. This may be done for clarification of information as he deems necessary in order to make a decision.

A witness may be needed at a later time. If so, the witness will be asked to remain. If it is determined there is no further need of the witness, the hearing officer will dismiss the witness.

Presentation of the Parent's Case

The parent spokesperson will present their case. He will follow the same procedures as used in the LEA's presentation. In addition to presenting the basic case, the parent spokesperson may wish to present rebuttal evidence (evidence given to explain, counteract, or disprove facts given in evidence by the opposing party) and testimony seeking to refute the LEA's presentation.

The hearing officer may grant greater latitude to parents in their presentation of evidence and testimony if they are not represented by an attorney.

LEA Rebuttal

After presentation by the parent spokesperson, the LEA will have an opportunity to present rebuttal evidence. Rebuttal evidence is restricted to those points brought up by the parent spokesperson in his presentation.

Summary (Closing) Statements

The hearing officer will ask each party to summarize its position. The LEA spokesperson will present a brief statement summarizing the proposed action and the supporting evidence. The parent spokesperson will present a closing statement summarizing their position in opposition to the LEA's action and the evidence which supports their position.

Closing Statements by Hearing Officer

The hearing officer will terminate the hearing with statements indicating that the hearing proceedings are concluded. He will indicate that a verbatim copy of the hearing will be available within a given number of days and where it may be obtained; that the decision will be mailed to each party within a given number of days; and what procedures to follow if a party wishes to appeal.

The hearing officer may give instructions to either or both parties to complete some posthearing activities. Parties must perform all those activities as designated by the hearing officer. The hearing officer may permit or request the parties to submit a written summary of the facts and evidence supporting the parties' position and how pertinent laws and arguments apply to the facts.

POSTHEARING ACTIVITIES

The Decision

The decision of the hearing officer should be based only on the evidence presented at the hearing (reflected in the exhibits and the official transcript). The written decision, called a Final Order, will contain:

a) a summary statement with the hearing officer's name, date, time, and place of the hearing
b) appearances (the names of legal counsel or representatives)
c) a brief description of the position of each party
d) any stipulations agreed upon by the petitioner and respondent
e) "findings of fact" - this is in narrative which sets forth the facts, established by the evidence, and by which a determination of the decision is based
f) conclusions of law - these are the major points of law as they relate to the case
g) the hearing officer's decision or ruling, i.e., the petitioner's request is granted or denied
h) the date
i) the hearing officer's signature

The hearing officer will send copies of the Final Order to the LEA, the parent, and the representatives for each party. The original hearing record and exhibits are filed at the Division of Administrative Hearings. A copy of the decision should be placed in the student's cumulative folder, and made a part of his educational record.

POSTORDER ACTIVITIES

After receipt of the Final Order, the grievance coordinator should schedule a meeting with the parents and LEA for the implementation of the Order. The grievance coordinator should also arrange for appropriate LEA officials to meet to discuss the decision and any implications it may have for the district. A copy of the Final Order must be forwarded to the Commissioner of Education.

APPEALS PROCESS

Any party aggrieved by the findings and decision of the hearing officer may appeal, i.e., seek a review of the decision. The State Commissioner of Education must be notified in writing, within ten (10) days, that the party wishes to appeal. The party seeking the review is called the petitioner/appellant. The responding party becomes known as the respondent/appellee.

The petitioner should send a notice of intention to seek review to the State Commissioner of Education, the respondent, and the hearing officer who ruled in the local level hearing.

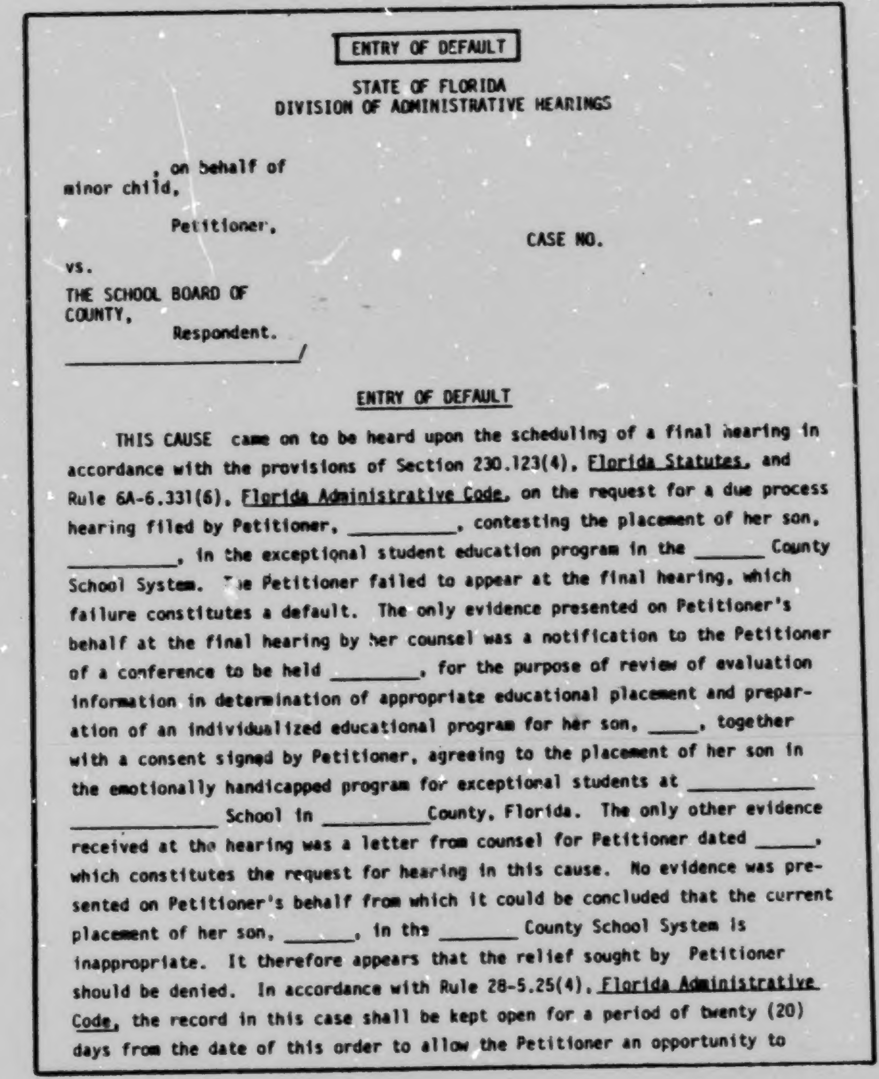
The appeal is a review of the local level hearing and does not necessarily result in a new hearing. The Commissioner or his designee will examine the entire local level hearing record, ensure that due process requirements were met, and make an independent decision. Additional evidence may be requested only if warranted. Parties may be given the opportunity for oral and written argument. The Commissioner must make a final decision within thirty (30) days of the appeal request and mail a copy of his decision to each of the parties. If a party is dissatisfied with the Commissioner's decision, an appeal may be made to a Court of Law.

NONAPPEARANCE BY EITHER PARTY

If one of the parties is not present at the hearing and has been properly and amply notified, the hearing officer will most likely proceed with the hearing. Testimony should be entered into the record concerning the fact that the absent party was notified of the hearing. The hearing officer will make a decision based upon the evidence and testimony presented during the hearing.

The hearing officer will prepare an Entry of Default, which states in writing the fact that a party did not appear at the scheduled hearing. The Entry may contain some conditions which the defaulting party must fulfill. The hearing officer may reconvene the hearing at a later date if a Motion to Set Aside Default is filed and good cause is shown for the nonappearance of a party. The defaulting party may present evidence and cross-examine witnesses who testified at the hearing.

The following is an example of an Entry of Default. This entry would be sent by the hearing officer to the defaulting party.



ENTRY OF DEFAULT

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

, on behalf of
minor child,

Petitioner,

CASE NO.

vs.

THE SCHOOL BOARD OF
COUNTY,
Respondent.
____________________/

ENTRY OF DEFAULT

THIS CAUSE came on to be heard upon the scheduling of a final hearing in accordance with the provisions of Section 230.123(4), Florida Statutes, and Rule 6A-6.331(6), Florida Administrative Code, on the request for a due process hearing filed by Petitioner, __________, contesting the placement of her son, __________, in the exceptional student education program in the ______ County School System. The Petitioner failed to appear at the final hearing, which failure constitutes a default. The only evidence presented on Petitioner's behalf at the final hearing by her counsel was a notification to the Petitioner of a conference to be held ________, for the purpose of review of evaluation information in determination of appropriate educational placement and preparation of an individualized educational program for her son, _____, together with a consent signed by Petitioner, agreeing to the placement of her son in the emotionally handicapped program for exceptional students at ____________ ______________ School in __________County, Florida. The only other evidence received at the hearing was a letter from counsel for Petitioner dated ______, which constitutes the request for hearing in this cause. No evidence was presented on Petitioner's behalf from which it could be concluded that the current placement of her son, _______, in the _______ County School System is inappropriate. It therefore appears that the relief sought by Petitioner should be denied. In accordance with Rule 28-5.25(4), Florida Administrative Code, the record in this case shall be kept open for a period of twenty (20) days from the date of this order to allow the Petitioner an opportunity to

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file a Motion to Set Aside the Default. Whereupon, it is,

ORDERED:

1. A Default is hereby entered against the Petitioner,

2. The record in this case will remain open for a period of twenty (20) days from the date of this order. If no Motion to Set Aside Default is filed, an Order will be entered denying the relief sought by the Petitioner.

DONE and ORDERED this ______ day of _______, 19__, in Tallahassee, Florida.

____
Hearing Officer
Address
Phone

Copies furnished to:

Parent
Address

Grievance Coordinator
Address

LEA Attorney
Address

SECTION IV - RECORD KEEPING AND DATA MANAGEMENT

OPENING A CASE FILE

This section is intended to assist the local education agencies (LEA's) in their efforts to maintain records, correspondence, and information pertaining to due process hearing cases. Good record keeping is essential. Information should be properly logged and easily retrievable.

Upon receipt of a hearing request, a case file is opened. All data pertaining to the case is kept in the file. It is advisable to keep all documents, correspondence, and data in a folder that has several dividers or partitions (partition folders). The partition folder allows for the organization and easy retrieval of information.

The folder should be labeled with the names of the petitioner and respondent, i.e., parent name vs. the School Board of ____________ County. The case number should also be included on the label.

MR. AND MRS. (PARENT'S NAME)

VS.

SCHOOL BOARD OF (COUNTY'S NAME) FLORIDA

CASE NO. 81-00E

A *Correspondence Sheet* is used to keep a chronological record of all written communication on the case. This includes such items as documents, correspondence, and waivers. Verbal communications are logged elsewhere.

Generally, the first communication to be logged would be the hearing request (if received in writing). Stamp the date of receipt on all incoming documents. A self-stick index tab is placed on the document; the document is then logged next to the corresponding letter on the Correspondence Sheet. Log the date that the document was sent or received. The initiator's and receiver's names should be recorded under "Persons." Briefly describe the purpose of the communication under "Reason." This process requires very little time but assists in retrieving information quickly.

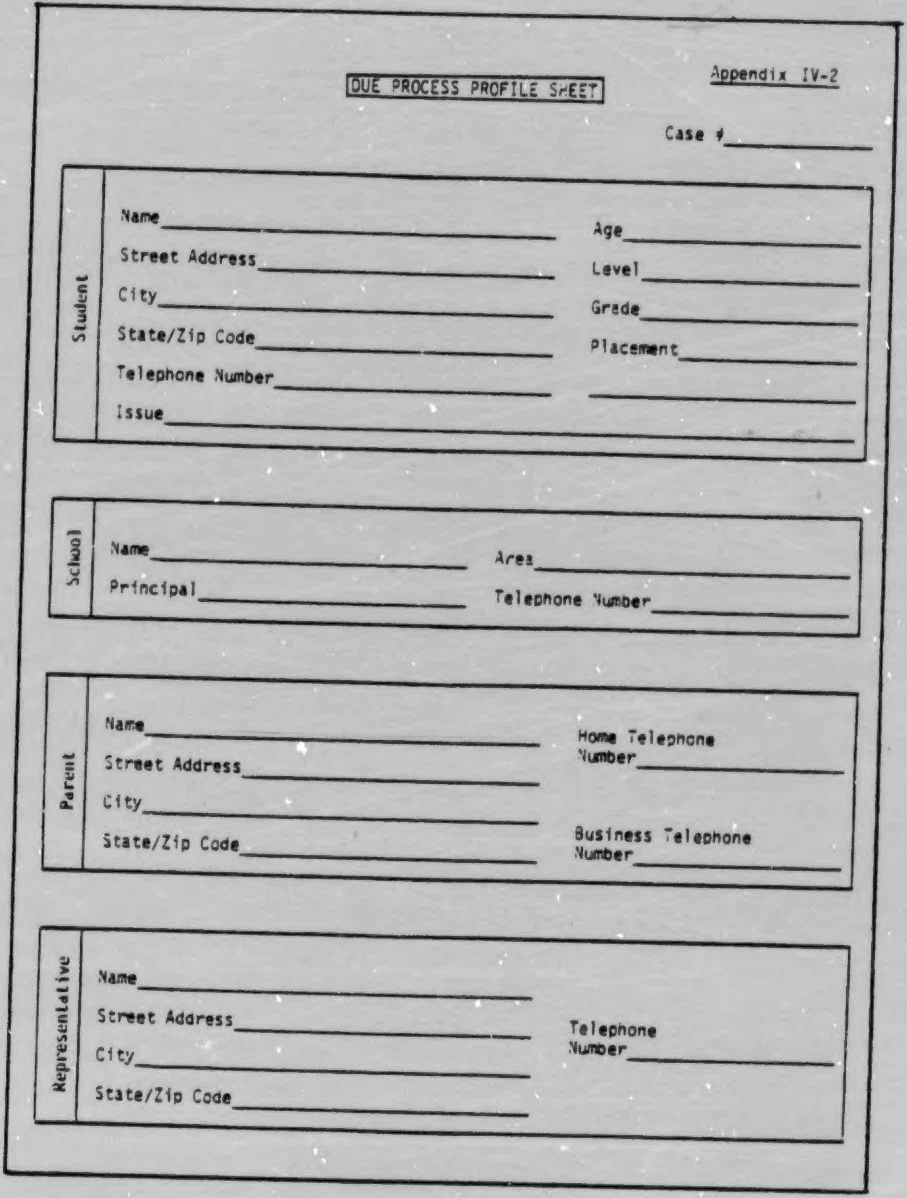
CORRESPONDENCE SHEET

Appendix IV-1

DATE PERSON REASON

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V
W
X

A *Profile Sheet* is used to record identifying information about the student, the parents, and their representative. This profile sheet provides ready access to demographic data that will be used frequently. This information is easily obtained by calling the student's school.



Appendix IV-2

DUE PROCESS PROFILE SHEET

Case #__________

Student

Name__________ Age__________
Street Address__________ Level__________
City__________ Grade__________
State/Zip Code__________ Placement__________
Telephone Number__________
Issue__________

School

Name__________ Area__________
Principal__________ Telephone Number__________

Parent

Name__________
Street Address__________ Home Telephone Number__________
City__________
State/Zip Code__________ Business Telephone Number__________

Representative

Name__________
Street Address__________ Telephone Number__________
City__________
State/Zip Code__________

A *Task Checklist* sequentially orders the tasks that must be completed by the grievance coordinator. It is invaluable in that it provides a framework within which the grievance coordinator can efficiently and effectively operate. In a complex process where time is of the essence, it helps organize and maintain an orderly flow of activities which are necessary for arranging for the hearing and mediation session(s). Simply by checking and dating the appropriate spaces, the grievance coordinator can quickly ascertain what has been accomplished and what needs to be done.

DUE PROCESS TASK CHECKLIST--PART I

Appendix IV-3a

Hearing Request	Made by: ☐ LEA Personnel ☐ Parents (Legal Guardian or Surrogate)	Date Received: ____ (45 days from time of receipt of request)
	Directed to: ☐ Grievance Coordinator ☐ Superintendent ☐ Director, ESE ☐ Area Superintendent ☐ School Principal ☐ Other	Date Received: ____ ____ ____ ____ ____ ____
Notification of Request of Rights and Responsibilities	Sent to: ☐ Parents/Guardians (Certified Mail) ☐ Director, Adm. Hearings ☐ School Board Attorney ☐ Superintendent ☐ Other ____	Date Mailed: ____ Date Postmarked: ____ ____ ____ ____ ____ ____ ____ ____ ____
Hearing Order	Received by: ☐ Grievance Coordinator ☐ School Board Attorney ☐ Other ____	Date: ____ ____ ____ Case No. ____
Mediation Arrangements	Date Mediation Offer Letter Sent to Parents: ____	☐ Accepted - Date: ____ Time: ____ Place: ____ ☐ Denied
	Mediation Results: ☐ Parental Acceptance ☐ Parental Denial	☐ Independent Evaluation Requested
	Another Meeting Required: ☐ Yes - Date: ____ Time: ____ Place: ____ ☐ No	
	Mediation Report Sent to: ☐ Parents ☐ School Board Attorney ☐ LEA Personnel ☐ Other ____ ☐ Dismissal Order Received	Date: ____ ____ ____ ____ Date: ____
Hearing Arrangements	Date Parent or Legal Representative Notified: ____	Date Written Response Received: ____
	Notified of Rights: ☐ Yes ☐ No Interpreter Needed: ☐ Yes ☐ No	Child Attending Hearing: ☐ Yes ☐ No Open Hearing: ☐ Yes ☐ No
Evidence Preparation	Requested from: ____ ____ ____ ____	Items Requested: / Date Requested / Date Received Copies (6) of Diagnostic Records ____ ____ Copies (6) of Educational Records ____ ____ Copies of ____ Records ____ ____ Letter of Explanation ____ ____
	Copies of Records Sent to: ☐ Parents/Guardians ☐ Legal Representative ☐ School Board Attorney ☐ Hearing Officer (Hold until hearing)	Date: ____ ____ ____ ____
	District Procedures Used: Year ____	Copies of Records Delivered by: ____

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DUE PROCESS TASK CHECKLIST--PART II

Appendix IV-3b

Pre-Hearing Conference	Parent Notified of Mutual Arrangements ☐ Date:________ Time:_____ Place:____________
	School Personnel Notified of Meeting ☐ Date:________ Time:_____ Place:____________
Arrangements For Hearing	Date:________ Time:______ Place:____________ ________ ______ ____________ ________ ______ ____________ ________ ______ ____________
	Determined by School Board Attorney or Grievance Coordinator, Parent, or Attorney for Parents, and the Hearing Officer. Clerical assistance arranged by Grievance Coordinator or School Board Attorney.
	Hearing Confirmation: ☐ Parents Date:__________ ☐ Parents' Attorney __________ ☐ LEA Personnel __________ ☐ Other__________ __________
	LEA Witnesses Preparation: ☐ Depositions Date:__________ ☐ Preparation for Hearing __________
Post-Hearing Activities	Transcripts of Hearing Provided to Parents or Parents' Attorney, LEA, and School Board Attorney ☐ Date:__________
	Requested by:____________ Date Sent:__________
	Findings of Facts--Conclusion of Law: File Brief--LEA and School Board Attorney ☐ Date:__________
	Decision of Hearing Officer (Order) ☐ Date:________ (45 days after receipt of request for hearing)
Appeals	Appeal ☐ Parents ☐ LEA Date:__________ (10 days after decision)
	School Board Attorney Gives Verbal Defense to Appeal (optional) ☐ Date:__________
	Commissioner's Decision (30 Days after Receipt of Request for Review) ☐ Date Filed:________ Date Received:________
	Extension of Time Requested by: ☐ Parents Date:__________ ☐ LEA Date:__________
	Appeal Commissioner's Decision to Court of Appeal: ☐ Parents Date:__________ ☐ LEA Date:__________

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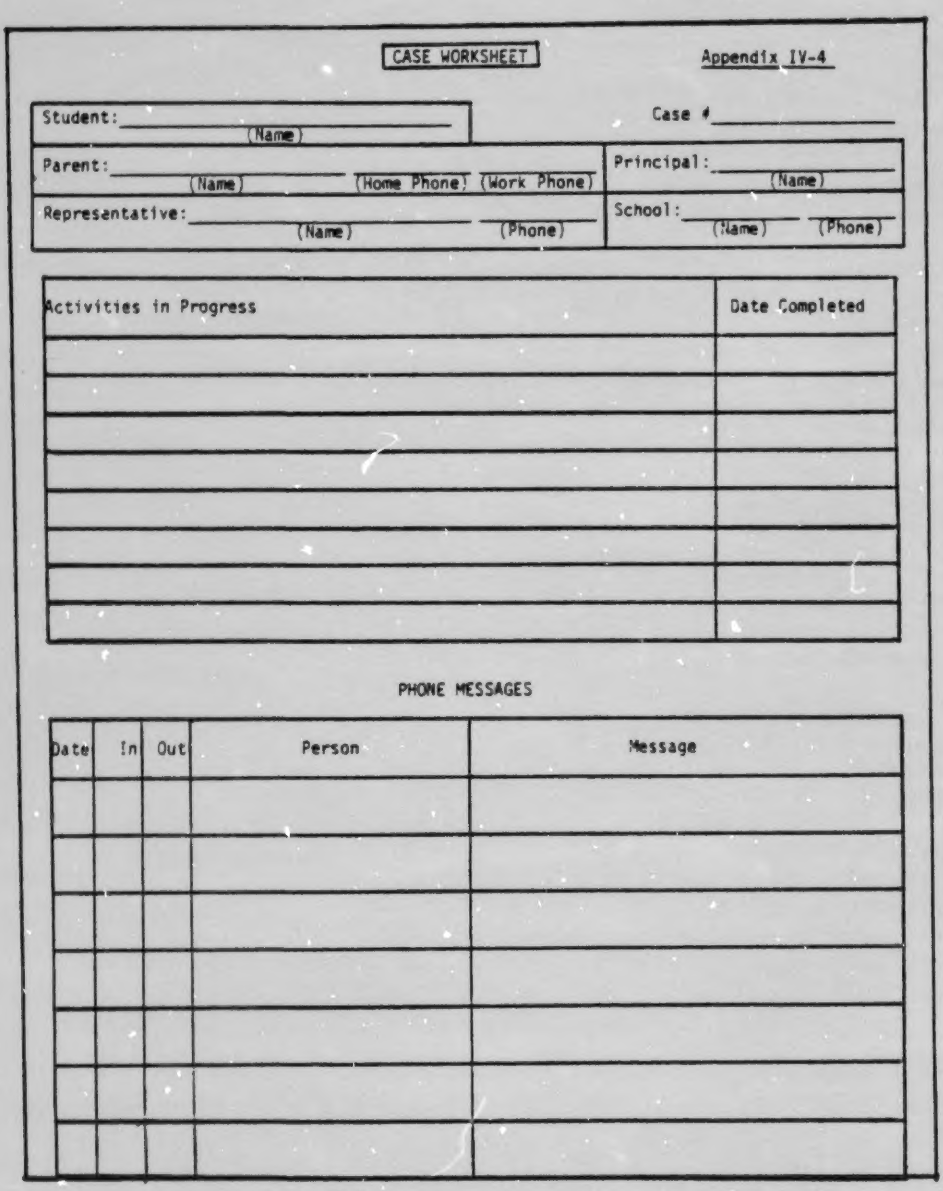
THE WORKING FOLDER

A working folder, though optional, can be helpful as a handy desk reference. It may contain readily accessible information on all current cases concerning mediation sessions and due process hearings. The working folder assists the grievance coordinator to quickly assess activities in progress. This is especially helpful in larger school districts where there may be a number of cases and their related activities are occurring simultaneously.

The *Case Worksheet* may be used to record demographic information, activities in progress and their completion dates, and to document telephone calls. It simplifies and organizes a quantity of information and makes it easily retrievable.



CASE WORKSHEET

Appendix IV-4

Student: ____________________ (Name)

Case # ____________

Parent: ____________ (Name) ____________ (Home Phone) ____________ (Work Phone)

Principal: ____________ (Name)

Representative: ____________ (Name) ____________ (Phone)

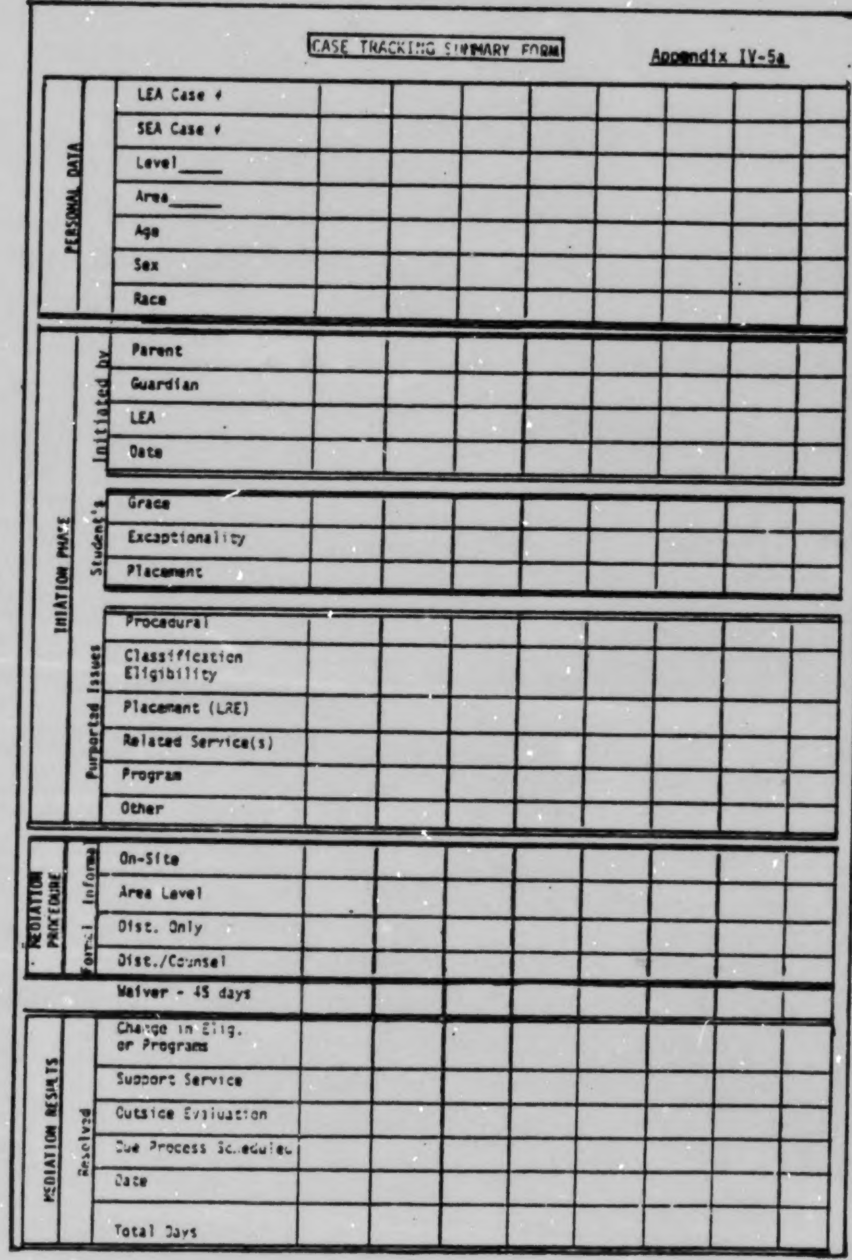
School: ____________ (Name) ____________ (Phone)

Activities in Progress	Date Completed

PHONE MESSAGES

Date	In	Out	Person	Message

The *Case Tracking Summary Form* may be used to keep a record of all cases and their current status. This information may be used in preparing reports for the State Department of Education, for budgeting purposes, inservice activities, and for research purposes.



CASE TRACKING SUMMARY FORM

Appendix IV-5a

PERSONAL DATA		LEA Case #								
		SEA Case #								
		Level____								
		Area____								
		Age								
		Sex								
		Race								
INITIATION PHASE	Initiated by	Parent								
		Guardian								
		LEA								
		Date								
	Student's	Grade								
		Exceptionality								
		Placement								
	Purported Issues	Procedural								
		Classification Eligibility								
		Placement (LRE)								
		Related Service(s)								
		Program								
		Other								
MEDIATION PROCEDURE	Informal	On-Site								
		Area Level								
	Formal	Dist. Only								
		Dist./Counsel								
		Waiver - 45 days								
MEDIATION RESULTS	Resolved	Change in Elig. or Programs								
		Support Service								
		Outside Evaluation								
		Due Process Scheduled								
		Date								
		Total Days								

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Page 2 **CASE TRACKING SUMMARY FORM** Appendix IV-5b

		LEA Case #								
PARENTAL SUPPORT SYSTEM	(Code M for at Mediation) (Code H for at Hearing)	Interpreter								
		Legal Advice (Not Represented)								
		Advocacy Group(s)								
		Community Agency								
		Professional Input								
		Other								
PARENTAL DECISIONS	Parental Requests	Selection of Hearing Officer								
		Open (O) Closed (C)								
		Student Present (P) Not Present (N)								
		Interpreter Required								
		Represented by Counsel								
		Rule Invoked								
		Other								
STATISTICAL DATA	Hearing Participants	# of Witnesses called/Parent								
		# of Witnesses called/LEA								
		# of Days Hearing Lasted								
		Time Extension Requested								
		Other								
HEARING ISSUES	Issues Defined	Procedural Classification/Eligibility								
		Placement (LRE)								
		Related Services Program								
		Other								

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Page 3

CASE TRACKING SUMMARY FORM

Appendix IV-5c

		LEA Case #								
OUTCOME(S)	Decision Implemented	Favor of LEA								
		Favor of Parent								
		Date								
	Decision Appealed	By LEA								
		By Parent								
		To Commissioner								
		To Civil Court								
	Total Time	Date								
		Total								
	Decision Implemented	Favor of LEA								
		Favor of Parent								
		Date								
	Decision Appealed	By LEA								
		By Parent								
		To Commissioner								
		To Civil Court								
	Total Time	Date								
		Total								
COSTS TO LEA*		Legal Fees								
		Court Reporter/ Transcript								
		Subpoena Fees								
		LEA Personnel Time								
		Secretarial Time								
		Paper Processing								
		Consultants								
		Independent Evaluation								

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SECTION V - INFORMATION TO ASSIST PARENTS

COMPILING INFORMATION TO ASSIST PARENTS

LEA's are required to inform parents of any free or low-cost legal or other relevant services available if the parent requests the information, or if the parent or school district initiates a hearing.

The information might include the following resources:

a) free or low-cost legal aid and other services

b) attorneys

c) hearing officers

d) independent evaluators

e) advocacy organizations

The purpose of this section is to assist the LEA's in their efforts to compile information that may be needed or requested by parents and/or their representatives.

ATTORNEYS

When preparing a list of attorneys who might represent parents in a due process hearing, it is advisable to include attorneys who are familiar with P. L. 94-142. Fees and experience may vary. Sources for locating attorneys include:

a) the local telephone directory

b) neighboring LEA's who have had due process hearings

c) the local Bar Association

A list of attorneys' names, addresses, and telephone numbers should be compiled and made available to parents, and should include low-cost legal aid offices.

HEARING OFFICERS

Each LEA must maintain a list of hearing officers. A list of names of hearing officers may be obtained from:

Division of Administrative Hearings
2009 Apalachee Parkway
The Oakland Building
Tallahassee, Florida 32301
(904) 488-9675

FREE OR LOW-COST LEGAL AID AND OTHER SERVICES

Sources for Legal Aid and Other Services

Florida Legal Services, Inc., has prepared a booklet entitled *Legal Services Directory*. This directory provides information about legal agencies and services located in Florida. Copies may be obtained free of charge from:

Florida Legal Services, Inc.
226 West Pensacola Street
Suite 223
Tallahassee, Florida 32301
(904) 222-2151

Closer Look is a national resource center for parents of children with handicaps. They will send lists of parent organizations in your community, publications and pamphlets, free of charge. They will send information to professionals which will assist them in working with parents of handicapped children and youth. For more information write to:

Closer Look
Post Office Box 1492
Washington, D. C. 20013

Child Find Resource Guide to Parent Information is a compilation of organizations that provide free or low-cost information suitable for distribution to parents. Copies may be obtained from:

Florida Diagnostic and Learning
Resources System
2091 N. W. 35th Street
Ocala, Florida 32670
(904) 732-5136

Parent information pamphlets may be obtained from the Florida Bureau of Education for Exceptional Students (BEES). Copies may be obtained from:

Bureau of Education for Exceptional Students
Division of Public Schools
Florida Department of Education
Knott Building
Tallahassee, Florida 32301

The *Children's Defense Fund* is a national, nonprofit organization which provides free and low-cost publications to parents and educators. Two handbooks of special interest are *94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children* and *Your School Records*. For more information write to:

Children's Defense Fund
1520 New Hampshire Avenue, N. W.
Washington, D. C. 20036

INDEPENDENT EVALUATORS

The compilation of a list of independent evaluators by the LEA is more than a service to parents - it is a mandate of the law. The LEA's list will probably not be inclusive. Inclusion on the list does not necessarily assure competency, only qualifications. Parents may certainly choose an independent evaluator not on the list, if the evaluator meets all qualifications as mandated by law.

LEA's should follow their District Procedures document as it relates to independent evaluations.

Independent evaluators include psychologists, psychiatrists, audiometrists, educators, speech/language diagnosticians, etc.

Sources for locating independent evaluators include:

a) the local telephone directory
b) the Florida Education Directory
c) local private schools
d) local colleges and universities (both public and private)
e) professional associations
f) referrals from other professionals

In compiling its list, the LEA may choose to call or send a letter to persons in the community requesting the following:

a) the names of persons interested in being included on the LEA list of independent evaluators
b) a resume of experience
c) data confirming qualifications (licensed or certified and not employed by local LEA)
d) assurance that they can provide a written report of the evaluation
e) assurance that they would participate in a mediation session(s)
f) assurance that they would testify at a due process hearing
g) a fee schedule (optional)

Once the information is gathered, compile a list of independent evaluators. Include names, addresses, telephone numbers, and area of specialty.

ADVOCACY

Governor's Commission on Advocacy for
the Developmentally Disabled
Office of the Governor
The Capitol
Tallahassee, Florida 32301
(904) 488-9070; TOLL FREE 1-800-342-0823

The following are examples of letters that might be sent to independent evaluators who may wish to be included on the LEA's list of independent evaluators.

Appendix V--1

INDEPENDENT EVALUATION
(SPEECH/LANGUAGE EVALUATORS)
SAMPLE LETTER

Dear Colleague:

The Exceptional Student Education Department of the (County Name) County School System is compiling a list of independent evaluators as part of our efforts to comply with Pulbic Law 94-142 which states:

> "Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained." (121a.503FR)

Evaluation specialists need to:

1) provide indepth speech and language evaluations and
2) identify areas of strengths and weaknesses.

The independent evaluation specialist must:

1) be registered to practice speech/language pathology in the state of Florida,
2) not be employed by the County School Board,
3) be able to provide written reports of evaluations,
4) be able to testify in mediation sessions, and
5) be able to testify at due process hearings.

If you are interested in being included on this list please send the following information:

1) a letter stating available assessment services,
2) a copy of your teaching certificate or
3) a statement by your administrator that only certified staff would provide evaluation services.

Please share this letter with other qualified colleagues who may wish to be included as independent evaluators. For more information contact ________________, at ______________________________.

Sincerely,

This letter is specifically to Speech/Language Evaluators.

INDEPENDENT EVALUATIONS
(EDUCATIONAL EVALUATORS)
SAMPLE LETTER

Appendix V--2

Dear Colleague:

The Exceptional Student Education Department of the (County Name) County School System is compiling a list of independent evaluators as part of our efforts to comply with Public Law 94-142 which states:

> "Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained." (131a.503FR)

Educational evaluators need to :

1) be able to assess students in major academic areas and/or
2) be qualified to administer process tests as part of a specific learning disabilities assessment.

Independent *educational* evaluators must:

1) have a current Florida teaching certificate,
2) not be employed by the County School Board,
3) be able to provide written reports of evaluations,
4) be able to participate in mediation sessions, and
5) be able to testify at due process hearings.

If you are interested in being included on this list please send the following information:

1) a letter stating available assessment services
2) a copy of your teaching certificate or
3) a statement by your administrator that only certified staff would provide evaluation services.

Please share this letter with other qualified colleagues who may wish to be included as independent evaluators. For more information contact________________, at______________________________.

Sincerely,

This letter is specifically
to Educational Evaluators.

OTHER INFORMATION

Requests may be made for copies of District Procedures, school board policies, and state and federal laws and regulations. It is helpful to keep extra copies available to fill these requests. The LEA needs to keep copies of District Procedures documents from previous years. At any given time, a due process hearing or mediation session can evolve over more than one academic year or involve procedures used in previous years. District Procedures documents from each year will be needed.

A district office should be responsible for compiling and distributing this information. Information packets should be kept at schools, the superintendent's office, and the exceptional student education office. Outside agencies (advocacy, legal services, etc.) should be aware that this information is available.

SECTION VI - REFERENCES

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Dispute Settlement Procedural Safeguards: A Catalogue of Materials Related to Educational Rights of Handicapped Children, Abt Associates, Inc., Washington, D.C.

APPENDIX I

PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF EXCEPTIONAL STUDENTS

It is very important for you to understand that you have the following rights:

1. You may examine all records related to the referral, identification, evaluation or educational placement of your child. You are also entitled to:

    a) explanations and interpretations of the records,
    b) copies of the records. Fees for copies must be based upon the cost of reproduction.
    c) seek correction of your child's records if you believe they are not accurate,
    d) give consent prior to the disclosure of certain information,
    e) request a hearing if you and the school district cannot reach agreement regarding the information in your child's records. (The contact person is specified in the district's procedures on Student Records)

2. You may request and obtain an independent evaluation.

    a. The evaluation will be public expense if:

        (i) You disagree with an evaluation obtained by the school district. However, the school district may request a hearing to show that its evaluation is appropriate. If the hearing officer rules in your favor, the school district will pay for the evaluation.

        (ii) A hearing officer conducting a hearing related to any action taken by the school district concerning special education requests an independent evaluation.

        NOTE: If the local school district agrees to pay for an independent evaluation, criteria used for obtaining the evaluation must be the same as those used by the district when it initiates an evaluation.

    b. The evaluation will be at the parent's expense if:

        (i) The parent voluntarily assumes the cost.

        (ii) The parent disagrees with the school's evaluation, and an impartial hearing officer decides in favor of the school district.

3. If you pay for an independent evaluation, you have the choice to introduce the evaluation for consideration by the school system or at a hearing. In both cases, if you choose to offer the evaluation, it must be considered in decisions regarding your child.

Appendix I-1b

4. You may refuse to agree to the pre-placement evaluation. In this case, the school district may request a hearing to settle the disagreement.

5. You may refuse to agree to a school district's proposed placement or a refusal to place your child in an exceptional education program. In this case, the school district may request a hearing to settle this disagreement.

6. You may withdraw your agreement to allow an evaluation or placement at anytime.

7. You will be notified of any other action the school district proposes to take regarding further identification, evaluation, change of placement, or provision of an education for your child.

8. Should you and the school district be unable to reach an agreement regarding the proposed identification, evaluation, placement or provision of an education for your child, both you and the school district have the following rights:

    (a) To request an impartial due process hearing, with the results of that hearing mailed to you within forty-five (45) days after the receipt of that request. Request for a hearing is made to the (Superintendent) in writing.

    (b) To have the hearing conducted by an impartial hearing officer. The impartial hearing officer will not be an employee of the local school district nor will he/she have a personal or professional interest in the outcome of the hearing.

    (c) To be accompanied and advised by an attorney or other individuals with special knowledge of exceptional children.

    (d) To present evidence, or to prevent the introduction of evidence that has not been provided to the other party at least five (5) days prior to the hearing.

    (e) To question and require the attendance of witnesses.

    (f) To obtain a written or taped record of the hearing.

    (g) To obtain the written findings and the decision of the hearing officer.

9. In addition to the rights above, you have the following rights regarding hearings:

    (a) To have your child present.

    (b) To open the hearing to the public upon request; the hearing will be closed to the public unless you request that it be open.

    (c) To receive from the school district information about free or low-cost legal and other appropriate services. This information will be provided to you if you ask, or if a hearing is requested by either you or the school district.

10. You may appeal the decision of the hearing officer within ten days to the Commissioner of Education for review. You will be given a decision within thirty (30) days of the request for a state level review.

11. You may appeal the decision of the Commissioner of Education to the Courts.

12. Your child will remain in his present program during all hearings and appeals, unless you and the school district agree to another placement. If your child is not attending school, you may agree to place him/her in a public school program until all hearings are completed.

13. An individual will be assigned to act as a surrogate parent to represent your child in providing an education if:

    a. the child is a ward of the state,
    b. no parent/guardian can be identified,
    c. no parent/guardian can be located.

PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF EXCEPTIONAL STUDENTS

It is very important for you to understand that you have the following rights:

1. You may examine all records related to the referral, identification, evaluation or educational placement of your child. You are also entitled to:

   a) explanations and interpretations of the records,
   b) copies of the records. Fees for copies must be based upon the cost of reproduction.
   c) seek correction of your child's records if you believe they are not accurate,
   d) give consent prior to the disclosure of certain information,
   e) request a hearing if you and the school district cannot reach agreement regarding the information in your child's records. (The contact person is specified in the district's procedures on Student Records)

2. You may request and obtain an independent evaluation.

   a. The evaluation will be public expense if:

      (i) You disagree with an evaluation obtained by the school district. However, the school district may request a hearing to show that its evaluation is appropriate. If the hearing officer rules in your favor, the school district will pay for the evaluation.

      (ii) A hearing officer conducting a hearing related to any action taken by the school district concerning special education requests an independent evaluation.

      NOTE: If the local school district agrees to pay for an independent evaluation, criteria used for obtaining the evaluation must be the same as those used by the district when it initiates an evaluation.

   b. The evaluation will be at the parent's expense if:

      (i) The parent voluntarily assumes the cost.

      (ii) The parent disagrees with the school's evaluation, and an impartial hearing officer decides in favor of the school district.

3. If you pay for an independent evaluation, you have the choice to introduce the evaluation for consideration by the school system or at a hearing. In both cases, if you choose to offer the evaluation, it must be considered in decisions regarding your child.

4. You may refuse to agree to the pre-placement evaluation. In this case, the school district may request a hearing to settle the disagreement.

5. You may refuse to agree to a school district's proposed placement or a refusal to place your child in an exceptional education program. In this case, the school district may request a hearing to settle this disagreement.

6. You may withdraw your agreement to allow an evaluation or placement at anytime.

7. You will be notified of any other action the school district proposes to take regarding further identification, evaluation, change of placement, or provision of an education for your child.

8. Should you and the school district be unable to reach an agreement regarding the proposed identification, evaluation, placement or provision of an education for your child, both you and the school district have the following rights:

   (a) To request an impartial due process hearing, with the results of that hearing mailed to you within forty-five (45) days after the receipt of that request. Request for a hearing is made to the (Superintendent) in writing.

   (b) To have the hearing conducted by an impartial hearing officer. The impartial hearing officer will not be an employee of the local school district nor will he/she have a personal or professional interest in the outcome of the hearing.

   (c) To be accompanied and advised by an attorney or other individuals with special knowledge of exceptional children.

   (d) To present evidence, or to prevent the introduction of evidence that has not been provided to the other party at least five (5) days prior to the hearing.

   (e) To question and require the attendance of witnesses.

   (f) To obtain a written or taped record of the hearing.

   (g) To obtain the written findings and the decision of the hearing officer.

9. In addition to the rights above, you have the following rights regarding hearings:

   (a) To have your child present.

   (b) To open the hearing to the public upon request; the hearing will be closed to the public unless you request that it be open.

   (c) To receive from the school district information about free or low-cost legal and other appropriate services. This information will be provided to you if you ask, or if a hearing is requested by either you or the

10. You may appeal the decision of the hearing officer to the Commissioner of Education for review. You will be given a decision within thirty (30) days of the request for a state level review.

11. You may appeal the decision of the Commissioner of Education to the Courts.

12. Your child will remain in his present program during all hearings and appeals, unless you and the school district agree to another placement. If your child is not attending school, you may agree to place him/her in a public school program until all hearings are completed.

13. An individual will be assigned to act as a surrogate parent to represent your child in providing an education if:

    a. the child is a ward of the state,
    b. no parent/guardian can be identified,
    c. no parent/guardian can be located.

BEST COPY AVAILABLE

NOTICE AND CONSENT FOR INDIVIDUAL EVALUATION

Date:____________________

____(Parent name)____________

____(Address)______________

Dear____________________:

Based on the referral of ________(Name, Title)________________, the ____(District Name)____ District Schools are recommending that your child, ____________________, be evaluated to help plan an educational program which best meets his/her needs.

School personnel have carefully reviewed your child's educational records, and have based the referral for evaluation upon this information, along with recommendations of teachers and other personnel who are familiar with your child.

The information below describes the procedures, tests and reports used in comprehensive evaluations.

The evaluation specialists will select specific tests and reports based on your child's needs, as indicated below.

_____Intellectual assessment
_____Academic performance
_____Vision screening or evaluation
_____Hearing screening or evaluation
_____Speech screening or evaluation
_____Language screening or evaluation
_____Other____________________
_____Social/developmental history
_____Medical evaluation
_____Behavior observations
_____Learning abilities assessment
_____Anecdotal records
_____Records from other agencies
_____Adaptive Behavior Assessment

Upon request, results of the evaluation along with an explanation will be provided to you.

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you on the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before you sign and return the consent form.

Please feel free to contact the office below if you have any questions.

Contact Person
Address
Phone

Enclosure: Procedural Safeguards
Consent Form

Please sign and return this consent form to:

Contact Person
Address
Phone

I have read and understand my rights in regard to the proposed evaluation.

_____I give my permission for testing.

_____I do not give my permission for testing.

_____I request a conference to discuss this evaluation before granting permission.

Parent Signature

Date

Child's Name

Date of Birth

Enclosure: Procedural Safeguards

Appendix I-3a

NOTICE OF INELIGIBILITY

Date:________________

(Parent name)
(Address)

Dear Mr. and Mrs.________________:

On (date), an eligibility staffing was held to review your child's educational needs. This document has been prepared to assist in explaining to you the findings and recommendations of the staffing committee.

The committee members concluded that your child ______________, is not eligible for educational assignment to a special program.

The committee members based their findings upon written reports of the following evaluations.

Name of tests, procedures or reports:	Description:
(Wechsler Intelligence Scale for Children-Revised)	(an individual test of general intelligence)

To meet you child's educational needs, the committee considered the following options and has recommended the following placement at (name) school.

____a. basic class ____________________
____b. basic class with supplementary consultation or special education services;
____c. basic class supplemented by itinerant instruction or a resource room;
____d. special class either full-time or part-time in a regular school;
____e. special day school;
____f. non-public residential or day school through a contractual arrangement;
____g. special class in a hospital or treatment center;
____h. individual instruction in a hospital or home setting;
____i. public residential school;
____j. other ____________________

The other options were rejected because they:

____ did not provide the least restrictive environment for your child;
____ did not provide the amount of individual or small group instruction required by your child;
____ other, specify____
____

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you in the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before signing and returning the consent form.

Please feel free to contact the office below if you have any questions:

Contact Person
Address
Phone

Enclosure: Procedural Safeguards

PARENT NOTICE OF A MEETING TO DEVELOP/REVIEW AN INDIVIDUAL EDUCATIONAL PLAN

Date:________________

___(Parent Name)____________
___(Address)______________

A meeting has been scheduled to_____develop,_____review the individual educational plan for your child,__________________. We feel it is important for you to attend this meeting and to have an opportunity to help us plan a program which meets your child's special needs.

The following people will be at this meeting:

____________________ (name,title)   ____________________ (name,title)

____________________   ____________________

Please return the lower portion of this letter as soon as possible. If the time or place of the meeting is inconvenient for you, please let us know by _____(date)________.

If you have any questions, please contact the office below.

Scheduled Meeting:
Time:________________
Place:_______________
Date:________________

____
Name
____
Address
____
Phone

- -

Student Name____________________

Scheduled Meeting:
Time:________________
Place:_______________
Date:________________

Check One:

____Yes, I will attend.

____No, I cannot attend the scheduled meeting; please contact me to make more convenient arrangements.

____
Parent Signature
____
Phone
____
Date

Appendix I-5

PARENT NOTICE OF STAFFING AND DEVELOPMENT OF AN INDIVIDUAL EDUCATIONAL PLAN

Date: ____________

(Parent name)
(Address)

Dear ______________:

A meeting has been scheduled to discuss the results of (child's name) recent evaluation. We will consider the most appropriate educational placement and develop an individual educational plan for your child at this meeting. Any placement of your child in an exceptional program will be based on careful study and will occur only after your knowledge and written permission. We feel it is important for you to attend this meeting and have an opportunity to help us plan the educational goals for your child.

The following people will be at this meeting:

______________________ (name, title)	______________________ (name, title)
______________________	______________________

Please return the lower protion of this letter as soon as possible. If the time or place of the meeting is inconvenient for you, please let us know by (date) . If you have any questions, please contact the office below.

Scheduled Meeting:
Time: ______________
Place: ______________
Date: ______________

____
Name
____
Address
____
Phone

- -

Student Name ______________

Scheduled Meeting:
Time: ______________
Place ______________
Date: ______________

Check One:

____Yes, I will attend.

____No, I cannot attend the scheduled meeting. Please contact me to make more convenient arrangements.

______________ Date	______________ Parent signature	______________ Telephone

Appendix I-6a

PARENT NOTICE OF STAFFING AND DEVELOPMENT OF AN INDIVIDUAL EDUCATIONAL PLAN

Date:______________

(Parent name)

(Address)

Dear_______________________:

A meeting has been scheduled to discuss the results of (child's name) recent evaluation. We will consider the most appropriate educational placement and develop an individual educational plan for your child at this meeting. Any placement of your child in an exceptional education program will be based on careful study and will occur only after your knowledge and written permission. We feel it is important for you to attend this meeting and have an opportunity to help us plan the educational goals for your child.

The following people will be invited to this meeting:

(name, title)	(name, title)
____________	____________

If you would like to bring someone to the meeting with you, please feel free to do so.

Please return the reply form which is attached to this letter by (date).

Scheduled Meeting:

Date:____________	(Contact Person)
Time:____________	(Address)
Place____________	(Phone)

REPLY FORM

Scheduled Meeting:

Date:____________________

Time:____________________

Place:____________________

Student Name:________________

____Staffing and IEP

____IEP

Please check the appropriate responses and return to the office below.

____Yes, I will attend the scheduled meeting.

____Please contact me to arrange a more convenient meeting.

____I do not plan to attend the meeting, but request a telephone conference to discuss the results of the meeting.

____I do not pland to attend the meeting. Please send me a copy of the individual educational plan.

____I plan to bring someone to the meeting. (Please list)______________

____

____
(Parent Signature)

____
(Telephone)

Appendix I-7a

NOTICE AND CONSENT FOR PLACEMENT

Date:____________

(Parent name)____________

(Address)____________

Dear Mr. and Mrs.______________:

On ____(date)____ , an eligibility staffing was held to review your child's educational needs. This document has been prepared to assist in explaining to you the findings and recommendations of the staffing committee.

The committee members concluded that your child,__________________, is eligible for educational assignment in a special program for (exceptionality) students.

The committee members based their findings upon written reports of the following evaluations:

Name of Test, procedures or reports:	Description:
(Wechsler Intelligence Scale for Children-Revised)	(an individual test of general intelligence)
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

To meet your child's educational needs, the committee considered the following options and has recommended the following placement at (name)________school.

____a. basic class____
____b. basic class with supplementary consultation or special education services.
____c. basic class supplemented by itinerant instruction or a resource room.
____d. special class either full-time or part-time in a regular school;
____e. special day school;
____f. non-public residential or day school through a contractual arrangement;
____g. special class in a hospital or treatment center:
____h. individual instruction in a hospital of home setting;
____i. public residential school;
____j. other____

The other options were rejected because they:

____did not provide the least restrictive environment for your child;

____did not provide the amount of individual or small group instruction required by your child:

____other, specify____

____

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you in the enclosure titled "Procedural Safeguards". Please read this enclosure carefully before signing and returning the consent form.

Please feel free to contact the office below if your have any questions;

Contact Person
Address
Phone

Enclosure: Precedural Safeguards
Consent Form

Appendix I-7c

Please sign and return this consent form to:

Contact Person
Address
Phone

I have read and understand my rights regarding the proposed educational placement.

Check one:

_____ I give permission for the proposed placement.

_____ I do not give permission for the proposed placement.

_____ I request a conference to discuss this proposed placement before granting permission.

____
Parent signature

____
Date

____
Child's name

____
Date of Birth

Enclosure: Procedural Safeguards

NOTICE OF FORMAL INDIVIDUAL RE-EVALUATION

Appendix I-8

Date: ____________________

___(Parent name)___

___(Address)___

Dear ________________:

Based on the referral of ___________(Name, Title)___________, the ___(District name)___ District Schools are recommending that your child, ________________, be re-evaluated to help plan an educational program which best meets his/her needs.

School personnel have carefully reviewed your child's educational records, and have based the referral for re-evaluation upon this information, along with recommendations of teachers and other personnel who are familiar with your child.

The information below describes those procedures, tests and reports used in comprehensive evaluations.

The evaluation specialists will select specific tests and reports based on your child's needs, as specified below.

___ Intellectual ability
___ Academic Achievement
___ Vision screening or evaluation
___ Hearing screening or evaluation
___ Speech screening or evaluation
___ Language screening or evaluation
___ Other ________________________

___ Social/developmental history
___ Medical evaluation
___ Behavior observations
___ Learning abilities
___ Anecdotal records
___ Records from other agencies
___ Adaptive Behavior Assessment

Upon request, results of the evaluation and an explanation will be provided to you.

Both federal and state regulations require that you be informed of your rights in this matter. These rights are described for you on the enclosure titled "Procedural Safeguards." Please read this enclosure carefully.

Please feel free to contact the office below if you have any questions.

Contact Person
Address
Phone

Enclosure: Procedural Safeguards

APPENDIX II

MEDIATION OFFER

DATE

NAME
ADDRESS
CITY, STATE ZIP CODE

Dear (Parent's Name)

A request for a due process hearing was received by this office on (Date). This office sent a letter on (Date) advising you of your due process hearing rights. However, the School Board of (County Name) County, Florida, would like to offer you the opportunity for mediation. Mediation is an informal meeting. It provides an opportunity for you and the school district to discuss concerns. An objective third person, a Mediator, will conduct the mediation session. He/she will assist you and the school district to resolve differences and reach solutions to the problem(s).

Mediation is not required by law. It does not cancel the due process proceedings. However, it may require additional time beyond the 45 day time requirement. This means that the hearing must be held and a decision made by the Hearing Officer by (Date) (45 days from the time your request was received). If you would like to consider mediation, you may waive (voluntarily give up) the 45 day time limit.

Attached is a form letter that may be used to indicate your decision regarding a mediation session. Please sign, date and return the attached form letter to this office. A self-addressed, stamped envelope is provided for your convenience.

(Complimentary Close)

Grievance Coordinator

(Reference initials)

attachment

cc: School Board Attorney

This letter offers parents the opportunity to mediate. Attached to this letter is a response form letter, Response to Mediation Offer and Waiver of the 45 Days.

RESPONSE TO MEDIATION OFFER AND WAIVER OF THE 45 DAYS

The School Board of (County Name) County, (State)
Exceptional Student Education
(Address)
(City, State, Zip Code)

Re: Mediation Offer

☐ I, the parent of ______(Student's Name)______, wish to accept the mediation offer.

☐ I, the parent of ______(Student's Name)______, do not wish to accept the mediation offer.

☐ I consent to the waiver of the 45-day time requirement.

☐ I do not consent to the waiver of the 45-day requirement.

____
(Parent's Signature)

____
(Date)

A Final Order must be rendered by the hearing officer within forty-five (45) days from receipt of the hearing request. Mediation often requires additional time. The parents have the option to either waive or not waive the forty-five (45) day time requirement.

Appendix II-3

CONFIRMATION LETTER TO PARENTS--MEDIATION SESSION

Date

Parent's Name
Address
City, State, Zip Code

Dear (Parent's Name):

As discussed during our telephone conversation on (Date), the mediation session will be held on (Date), (Time), at (Location).

You may bring any individual(s) knowledgeable about your child or information concerning your child to the session. The following Local Education Agency persons will be in attendance at the session:

(Name), (Title)   (Name), (Title)
(Name), (Title)   (Name), (Title)
(Name), (Title)   (Name), (Title)

If you have any concerns regarding the above information, or if I may be of further assistance, please feel free to contact me at (Telephone).

Sincerely,

Grievance Coordinator

cc: LEA Attorney

NOTICE TO LEA PERSONNEL - ATTENDANCE AT MEDIATION SESSION

Date:

TO: LEA Personnel

FROM: Grievance Coordinator

SUBJECT: MEDIATION SESSION CONCERNING - (Student's Name)

This is to notify you that your attendance is requested at a Mediation Session to be held on (Date), (Time), at (Location).

The (County's Name) County School System and the parents have agreed to mediation as an interim step in the due process procedures. Mediation is an informal and flexible way of resolving differences through understanding and/or compromise of differing viewpoints. The mediation process enables the parties involved to present their respective positions with the idea that through understanding a mutually agreed upon solution may be reached. Mediation does not require the cancellation of the due process proceedings.

Generally, most sessions take two to three hours. Depending on circumstances the session may need to be extended and/or rescheduled. You are asked to remain the entire session. Please plan accordingly. Please bring any information, such as the student's records, Psychological Folder, Cumulative Folder, Student Folder, P.R.E.P. Folder, observations and work samples.

(initials)

LEA Personnel involved in the case most frequently include the school principal, ESE Administrators/Supervisors, student's teacher(s), the school psychologist, staffing specialist, and guidance counselor. All persons involved in the case are notified and should be available to participate in the mediation session. However, the mediator will determine which persons do participate.

MEDIATION AGREEMENT FORM

Appendix II-5

Case #: ______________________________

Date of Mediation Session: ________________

Mediator: ____________________________

Student's Name: ________________________

Persons in Attendance: ________________ ________________

______________ ________________ ________________

______________ ________________ ________________

Summary of Issues:

Recommendations:

1.

2.

3.

4.

5.

Date: __________ and in effect to: ____________

Parent's Signature ______________________

LEA Personnel's Signature ________________
(Person responsible for monitoring the agreement)

Comments and additional statements:

> The Mediation Agreement Form may be completed at the meeting and copies given to the participants.

MEDIATION SUMMARY REPORT

A due process hearing request was initiated by Mr. and Mrs. John Doe on September 27, 1980, concerning the educational placement of their daughter, Susie Doe.

On October 10, 1980, a mediation conference was held at Center School for the purpose of resolving and/or clarifying the issues. Those persons in attendance were:

- John and Jane Doe, Parents
- Ms. Principal, Center School
- Mr. Area Coordinator, Exceptional Student Education
- Ms. Mediator, Coordinator, Due Process

Ms. Mediator informed the parties of their rights and responsibilities and the procedural safeguards afforded them by law. This information was also provided in letters sent to Mr. and Mrs. Doe on September 29, 1980, and October 2, 1980. Ms. Mediator explained the purpose of mediation and her role as mediator.

Susie Doe is a fourteen-year-old female who is presently attending Center School and is classified as Emotionally Handicapped/Trainable Mentally Handicapped.

Susie's past program placements were discussed as well as her present curriculum, Individual Educational Program, and her current levels of academic, social, and emotional functioning.

Mrs. Doe is currently attending the parent counseling sessions at Center School. She tape records these sessions to share with Mr. Doe. Mr. and Mrs. Doe assist Susie with her school work several hours each evening. Currently, through the parent counseling group, a home/school program has been established.

The Doe's concerns were:

1. Susie has not progressed while at Center School and, in fact, has shown regression at home since this summer (Examples: She will not get out of bed until told to do so; she asks for permission to use the bathroom). She will not do things now that she has done in the past.
2. Susie was doing better academically at County Elementary School in the Emotionally Handicapped program.
3. Susie is over-protected at Center School and is not allowed to be self-sufficient (Example: She is walked to her parents' car each day).
4. They would like for Susie to be as independent as possible but realized that she will always need some care. They do not expect high academic achievement.

5. They would like Susie's placement changed to a program with normal peers so she can have normal peer-role models. She should be educated in the least restricted environment.
6. They feel that Susie is emotionally disturbed more than retarded. Her teachers are too lenient and Susie should be "pushed" more.

School and district personnel's concerns were:

Susie is presently grouped with students based on her social, emotional, and cognitive functioning. She is given highly structured age-appropriate activities. The curriculum meets her individual needs and she is given functional academic activities to help her prepare for real-world experience.

As Susie has gotten older, there is a more significant and pronounced gap between her age and her behavioral and social interactions. Developmentally, she is functioning at a two- to three-year-old level.

Susie is only responding to what is immediate and demanded of her in her environment. She is selective and chooses when she wants to interact and respond to her external environment.

Susie is appropriately placed at Center School. Her school placements and programs, as well as her home environment, have varied over the years. Another change of placement could be harmful for Susie.

The following recommendations are a result of the mediation session:

1. By October 15, 1980, the parents and school personnel will meet to initiate a referral for neurological and psychiatric evaluations. They will formulate questions and concerns to be asked of the evaluators. The parents are encouraged to recommend a psychiatrist. All arrangements for the evaluation will be coordinated by the county's Florida Diagnostic and Learning Resource System (FDLRS).
2. Prior to October 19, 1980, an Individual Educational Plan (IEP) review will be scheduled. Susie's vocational, social, and behavior management program will be specifically reviewed. Guidelines for independent activities for Susie will be established.
3. Another IEP review will take place in January, 1981. The review will address Susie's total program, including home/school management and the attendance of Mr. Doe at the forthcoming evening parent-counseling sessions.

4. The parents will visit several high school programs to view the continuum of educational programs and the functional levels of students who are of Susie's age. Mr. Area Coordinator will arrange for the visitations to other school sites and will meet and escort the Does to these schools. Mr. Area Coordinator may be contacted at:

   South Area Exceptional Student Education
   South Elementary School
   Telephone: 123-4567

5. Frequent conferences will be scheduled between the home and school to provide ongoing communication to assure success for Susie.

By the end of January, 1981, Mr. and Mrs. Doe are to contact Ms. Due Process Coordinator to either cancel or proceed with the due process hearing. They may contact her sooner if they wish. She may be contacted at 123-4560.

The Mediation Summary Report is a detailed and lengthy report. The mediator writes the report and copies are sent to participants.

APPENDIX III

PARENT REQUEST FOR A DUE PROCESS HEARING

Date

Grievance Coordinator
Address
City, State Zip Code

Dear (Grievance Coordinator):

We do not agree with the Staffing Committee's recommendation that our son (child's name) is Emotionally Handicapped.

We are requesting a due process hearing about this matter.

Sincerely,

(Parents)

This request for a hearing was initiated by the parents. Once the request is received by the LEA, a hearing must be held and a decision reached within 45 days of the date of receipt.

Though there is no required format, any request should minimally include the student's and parents' name and the issue.

Appendix III-2

PARENT REQUEST FOR A DUE PROCESS HEARING

(Form Letter)

Student Name: ____ Date: ___________

I hereby request a due process hearing regarding the following matter:

_______ Proposal to evaluate my child,

_______ Refusal to evaluate my child,

_______ Placement of my child in a special program for exceptional students,

_______ Refusal to place my child in a special program for exceptional students,

_______ Provision of a free public education appropriate for my child.

My request is based on the following reasons:

____

____

____

____

____

____

I have been informed of my rights in a hearing.

____
Parent Signature

____
Address

____

A form letter may be used but cannot be required when a parent wishes to request a hearing.
This form may be also completed by the LEA after receiving a verbal request.

LEA REQUEST FOR A DUE PROCESS HEARING

TO: Grievance Coordinator

FROM: (LEA Personnel's Name)

DATE:

SUBJECT: Due Process Hearing Request for (Student's Name)

I am requesting a due process hearing for the placement of (Student's Name) due to the fact that all efforts to secure parent participation and consent for placement have been unsuccessful.

A summary is attached.

Reference initials
cc: (Area Superintendent)

Attachment

> The school principal or an Exceptional Student Education supervisory person is usually the LEA employee who requests a hearing.

NOTIFICATION TO DIVISION OF ADMINISTRATIVE HEARINGS OF HEARING REQUEST

Appendix III-4

(Date)

Director
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301

RE: Due Process - (Student's Name)

Dear (Director's Name):

Attached is a letter from (Parent's Name) requesting a Due Process hearing for their child (Child's Name). Also attached is a copy of the letter notifying (Parent's Name) of their rights and responsibilities.

We will keep you informed as to the progress of the proceedings.

We would appreciate if you would forward a copy of all correspondence to:

(Name of LEA Attorney)
LEA Attorney
(Address)
(City, State) (Zip Code)

Sincerely,

Grievance Coordinator
Initials
Attachments

cc: Superintendent
LEA Attorney
School Principal

This letter is usually proceeded by phone contract. Due to timeframes information must be shared as rapidly as possible.

NOTIFICATION TO PARENTS OF RIGHTS AND RESPONSIBILITIES

Date

Parents' Name
Address
City, State Zip Code

Dear (Parents' Name):

This letter is in response to your letter of (Date), requesting a Due Process Hearing concerning the (issue) of your (son/daughter), Student's Name), who attends (School Name). This letter is to notify you of your rights and responsibilities before, during, and after the hearing. These include the right to:

a. have an impartial due process hearing conducted by an impartial hearing officer who will not be an employee of the school district.

b. particiapte in the selection of a hearing officer from the Division of Administrative Hearings, Department of Administration.

c. be accompanied and advised by individuals with special knowledge or training with respect to the problems of exceptional children.

d. be represented by legal counsel.

e. an interpreter (at no cost to you).

f. have the hearing scheduled at a reasonably convenient time.

g. examine and obtain copies of school records.

h. request an independent evaluation, if you disagree with an evaluation obtained by the district.

i. present evidence and confront, cross-examine, and compel the attendance of witnesses.

j. prohibit the introduction of any evidence at the hearing that has not been shared with you at least five days before the hearing.

k. have your child, the subject of the hearing, present.

l. determine if the hearing will be opened to the public or closed.

m. request information from the school district on any free or low-cost legal and other relevant services available.

n. request a verbatim record of the hearing and a written findings of fact and decision.

o. to have the decision of the hearing officer within 45 days of your request for the hearing. You may also waive the 45 day time requirement.

If you wish to appeal the findings and decisions of the hearing officer, the appeal must be submitted in writing, within ten (10) days, to the Commissioner of Education.

If you wish to appeal the final decision of the Commissioner of Education, the appeal must be submitted to the District Court of Appeals in the District where the agency maintains its headquarters or where you reside. Review proceedings are in accordance with the Florida Appellate Rules and the Provisions of the Administrative Procedures Act, 1974.

The present educational program of your child, (child's name), shall remain the same until a decision concerning his/her educational program is finalized, unless you and the district can mediate prior to the hearing.

Enclosed are lists of the names, addresses, and phone numbers of free or low-cost legal aid, attorneys, and services. Please do not hesitate to contact this office at (phone number) if you have any questions or wish any assistance regarding this proceeding.

Cordially yours,

Grievance Coordinator

Reference initials
Enclosures (3)

cc: Superintendent of Schools
Director, Div. of Adm.
LEA Attorney
School Principal
ESE Administrator/Supervisor

Additionally, a district may choose to include:

1. copy(s) of the district procedures document
2. a copy of P.L. 94-142
3. a copy of Vol. 1-B (A Resource Manual for the Development and Evaluation of Special Programs for Exceptional Students)
4. pamphlets, booklets--information to parents

NOTICE TO LEA PERSONNEL OF HEARING REQUEST

TO: LEA Personnel Involved in Case

FROM: Grievance Coordinator

DATE:

SUBJECT: Due Process Hearing Request - (Student's Name)

Enclosed is a letter from (Parents' Name), requesting a due process hearing regarding (issue), for their son/daughter, (Student's Name). Also enclosed is a copy of the letter notifying the parents of their rights and responsibilities concerning due process hearings. The Division of Administrative Hearings has been notified of the request.

We will keep you informed as to the progress of the proceedings.

(Reference initials)

Enclosures (2)

cc: LEA Attorney

This letter informs LEA personnel that the parents have initiated a due process hearing. LEA personnel most frequently involved in hearings are ESE supervisory personnel and school principals. The school principal would contact his/her staff members who might be involved.

NOTICE TO LEA ATTORNEY OF HEARING REQUEST

TO: LEA Attorney

FROM: Grievance Coordinator

DATE:

SUBJECT: Due process hearing request - (Student's Name)

Enclosed is a copy of the following:

1. a letter from (Parents' Name), requesting a due process hearing regarding __(issue)__, for their son/daughter, (Student's Name).
2. a notification letter to the parents regarding their rights and responsibilities before, during, and after the hearing.
3. a notification letter to the Division of Administrative Hearings regarding the hearing request.
4. a notification letter to LEA personnel regarding the hearing request.

This office will keep you informed as to whether or not the parents wish to mediate.

(Reference initials)

Enclosures

CONFIRMATION LETTER TO PARENTS OF HEARING ARRANGEMENTS

Parent Name
Address

Date

RE: (Parents' Name) -vs- The School Board of (County's Name), Florida
Due Process Hearing

Dear Mr. and Mrs. (Name of Parents):

Pleased be advised that I have contacted (Hearing Officer's Name), Hearing Officer. He/she has advised me that he/she will be available for a hearing on (Date), commencing at (Time). Please indicate by return mail whether or not this date and time are acceptable to you.

In addition to the above, please respond to the following:

(a) Is there a need for an interpreter? ____ Yes ____ No

(b) Have you received notification regarding information, rights and responsibilities both before, during, and after the hearing? ____ Yes ____ No

(c) Do you wish your child to attend the hearing? If so, it will be your responsibility to make the appropriate arrangements. ____ Yes ____ No

(d) Do you wish an open or closed hearing? An open hearing would permit any member of the public to attend, whereas a closed hearing would restrict attendance to only the parties, their representatives and those persons who will testify as witnesses. ____ Open ____ Closed

For your convenience a copy of this letter is enclosed for your response. It is important that you return it as soon as possible.

Cordially,

LEA Attorney

Reference initials
Enclosure
cc: Grievance Coordinator

This letter would be sent to the parents to confirm the date, time and place for the hearing, and to gather other necessary information so arrangements may be completed.

Appendix III-9a

CONFIRMATION LETTER TO HEARING OFFICER OF HEARING ARRANGEMENTS

Date

(Name)
Hearing Officer
Division of Administrative Hearings
2009 Apalachee Parkway
Tallahassee, Florida 32301

RE: (Parent Name)/The School Board of ____________County, Florida, Case Number ________

Dear (Hearing Officer's Name):

In accordance with your Order dated _______, please be advised as to the following:

a. There is need for an interpreter and the School Board will provide same.

b. The hearing is scheduled for (date), commencing at (time), at (address). This time, date and place has been agreed upon by all parties concerned.

c. The parties were notified as to the hearing referred to above, via letter dated (date).

d. The School Board shall arrange for a court reporter to be present at the hearing and to have a verbatim transcript subsequently made.

e. All parties have been notified regarding information, rights and responsibilities before the hearing and after the hearing.

f. If the parents wish the child to attend the hearing, they will make the appropriate arrangements.

g. The attorney for the Petitioners, in this case, (Name of Attorney), has indicated a closed hearing.

h. The parties are hereby notified that the parents will make the determination as to whether or not the child will be present at the hearing and all parties will comply with that determination.

i. All arrangements will be made.

j. The entire file concerning (child's name), which material may be introduced into evidence at the hearing, was presented to (attorney's name or parent) under separate cover ten (10) days prior to hearing.

If there are any questions concerning the information set forth above, I request the Honorable (Hearing Officer) or (Attorney for Parents) to immediately notify me concerning same.

Sincerely yours,

LEA Attorney

Reference initials
cc: Parents or Attorney for Parents
Grievance Coordinator
LEA Personnel

This letter advises the Hearing Officer that arrangements have been made for the hearing.

REQUEST LETTER - ISSUES/RECORDS/WITNESSES

TO: (Name), Area Coordinator
Exceptional Student Education

FROM: (Grievance Coordinator)

DATE: (Current Date)

SUBJECT: Due Process (Student's Name)

Please send the following information on the above student as quickly as possible:

1. a list of school personnel who will be witnesses
2. a list identifying main issues
3. the original psychological records, education records, and cumulative folder

Please make one (1) copy of the records at the school or department from where they were obtained. Your cooperation is appreciated.

DISCLOSURE OF INFORMATION

Date

Attorney for Parent
Address
City, State Zip Code

RE: (Child's Name)

Dear (Attorney's Name):

In keeping with the requirements for Due Process Hearings, I am forwarding to you a copy of the rules of procedure for due process hearings, a copy of all materials which may or may not be introduced in evidence at the hearing on the above named student of the (County) School System, a copy of the District Procedures Document, and a list of witnesses who will appear and testify on behalf of the LEA.

Sincerely yours,

(Grievance Coordinator)

Reference initials
cc: LEA Attorney
    Parents

This letter indicates the information and evidence that is being disclosed by the LEA in keeping with the 5-day disclosure rule.

APPENDIX IV

CORRESPONDENCE SHEET

Appendix IV-1

DATE PERSON REASON

A

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

W

X

Appendix IV-2

DUE PROCESS PROFILE SHEET

Case # ____________

Student

Name ______________________ Age ____________
Street Address ______________________ Level ____________
City ______________________ Grade ____________
State/Zip Code ______________________ Placement ____________
Telephone Number ______________________ ____________
Issue ____

School

Name ______________________ Area ____________
Principal ______________________ Telephone Number ____________

Parent

Name ______________________ Home Telephone Number ____________
Street Address ______________________
City ______________________ Business Telephone Number ____________
State/Zip Code ______________________

Representative

Name ______________________
Street Address ______________________ Telephone Number ____________
City ______________________
State/Zip Code ______________________

DUE PROCESS TASK CHECKLIST--PART I

Appendix IV-3a

Hearing Request

Made by: ☐ LEA Personnel ☐ Parents (Legal Guardian or Surrogate)

Date Received: ____________ (45 days from time of receipt of request)

Directed to: ☐ Grievance Coordinator ☐ Superintendent ☐ Director, ESE ☐ Area Superintendent ☐ School Principal ☐ Other

Date Received: ____________

Notification of Request of Rights and Responsibilities

Sent to: ☐ Parents/Guardians (Certified Mail) ☐ Director, Adm. Hearings ☐ School Board Attorney ☐ Superintendent ☐ Other ____________

Date Mailed: ____________

Date Postmarked: ____________

Hearing Order

Received by: ☐ Grievance Coordinator ☐ School Board Attorney ☐ Other ____________

Date: ____________

Case No. ____________

Mediation Arrangements

Date Mediation Offer Letter Sent to Parents: ____________

☐ Accepted - Date: ____________ Time: ____________ Place: ____________

☐ Denied

Mediation Results: ☐ Parental Acceptance ☐ Parental Denial ☐ Independent Evaluation Requested

Another Meeting Required: ☐ Yes - Date: ____________ Time: ________ Place: ____________ ☐ No

Mediation Report Sent to: ☐ Parents ☐ School Board Attorney ☐ LEA Personnel ☐ Other ____________

Date: ____________

☐ Dismissal Order Received Date: ____________

Hearing Arrangements

Date Parent or Legal Representative Notified: ____________

Date Written Response Received: ____________

Notified of Rights: ☐ Yes ☐ No

Interpreter Needed: ☐ Yes ☐ No

Child Attending Hearing: ☐ Yes ☐ No

Open Hearing: ☐ Yes ☐ No

Evidence Preparation

Requested from:	Items Requested:	Date Requested	Date Received
____________	Copies (6) of Diagnostic Records	____________	____________
____________	Copies (6) of Educational Records	____________	____________
____________	Copies of ____________ Records	____________	____________
____________	Letter of Explanation	____________	____________

Copies of Records Sent to: ☐ Parents/Guardians ☐ Legal Representative ☐ School Board Attorney ☐ Hearing Officer (Hold until hearing)

Date: ____________

District Procedures Used: Year_____ Copies of Records Delivered by: ____________

DUE PROCESS TASK CHECKLIST--PART II

Appendix IV-3b

Pre-Hearing Conference	Parent Notified of Mutual Arrangements ☐ Date: ________ Time: ____ Place: ____________
	School Personnel Notified of Meeting ☐ Date: ________ Time: ____ Place: ____________
Arrangements for Hearing	Date: ________ Time: ______ Place: ____________ ________ ______ ____________ ________ ______ ____________ ________ ______ ____________ Determined by School Board Attorney or Grievance Coordinator, Parent, or Attorney for Parents, and the Hearing Officer. Clerical assistance arranged by Grievance Coordinator or School Board Attorney.
	Hearing Confirmation: ☐ Parents Date: ________ ☐ Parents' Attorney ________ ☐ LEA Personnel ________ ☐ Other ________ ________
	LEA Witnesses Preparation: ☐ Depositions Date: ________ ☐ Preparation for Hearing ________
Post-Hearing Activities	Transcripts of Hearing Provided to Parents or Parents' Attorney, LEA, and School Board Attorney ☐ Date: ________
	Requested by: ________ Date Sent: ________
	Findings of Facts--Conclusion of Law: File Brief--LEA and School Board Attorney ☐ Date: ________
	Decision of Hearing Officer (Order) ☐ Date: ________ (45 days after receipt of request for hearing)
Appeals	Appeal ☐ Parents ☐ LEA Date: ________ (10 days after decision)
	School Board Attorney Gives Verbal Defense to Appeal (optional) ☐ Date: ________
	Commissioner's Decision (30 Days after Receipt of Request for Review) ☐ Date Filed: ________ Date Received: ________
	Extension of Time Requested by: ☐ Parents Date: ________ ☐ LEA Date: ________
	Appeal Commissioner's Decision to Court of Appeal: ☐ Parents Date: ________ ☐ LEA Date: ________

CASE WORKSHEET

Appendix IV-4

Student: ______________________________
(Name)

Case # ____________________

Parent: ____________________ ______________ ______________
(Name) (Home Phone) (Work Phone)

Principal: ____________________
(Name)

Representative: ____________________ ______________
(Name) (Phone)

School: ______________ ______________
(Name) (Phone)

Activities in Progress	Date Completed

PHONE MESSAGES

Date	In	Out	Person	Message

CASE TRACKING SUMMARY FORM

Appendix IV-5a

PERSONAL DATA		LEA Case #								
		SEA Case #								
		Level_____								
		Area______								
		Age								
		Sex								
		Race								
INIATION PHASE	Initiated by	Parent								
		Guardian								
		LEA								
		Date								
	Student's	Grade								
		Exceptionality								
		Placement								
	Purported Issues	Procedural								
		Classification Eligibility								
		Placement (LRE)								
		Related Service(s)								
		Program								
		Other								
MEDIATION PROCEDURE	Informal	On-Site								
		Area Level								
	Formal	Dist. Only								
		Dist./Counsel								
		Waiver - 45 days								
MEDIATION RESULTS	Resolved	Change in Elig. or Programs								
		Support Service								
		Outside Evaluation								
		Due Process Scheduled								
		Date								
		Total Days								

CASE TRACKING SUMMARY FORM

Appendix IV-5b

		LEA Case #								
PARENTAL SUPPORT SYSTEM	(Code M for at Mediation) (Code H for at Hearing)	Interpreter								
		Legal Advice (Not Represented)								
		Advocacy Group(s)								
		Community Agency								
		Professional Input								
		Other								
PARENTAL DECISIONS	Parental Requests	Selection of Hearing Officer								
		Open (O) Closed (C)								
		Student Present (P) Not Present (N)								
		Interpreter Required								
		Represented by Counsel								
		Rule Invoked								
		Other								
STATISTICAL DATA	Hearing Participants	# of Witnesses called/Parent								
		# of Witnesses called/LEA								
		# of Days Hearing Lasted								
		Time Extension Requested								
		Other								
HEARING ISSUES	Issues Defined	Procedural Classification/Eligibility								
		Placement (LRE)								
		Related Services Program								
		Other								

Appendix IV-5c

CASE TRACKING SUMMARY FORM

page 3

		LEA Case #								
OUTCOME(S)	Decision Implemented	Favor of LEA								
		Favor of Parent								
		Date								
	Decision Appealed	By LEA								
		By Parent								
		To Commissioner								
		To Civil Court								
	Total Time	Date								
		Total								
	Decision Implemented	Favor of LEA								
		Favor of Parent								
		Date								
	Decision Appealed	By LEA								
		By Parent								
		To Commissioner								
		To Civil Court								
	Total Time	Date								
		Total								
COSTS TO LEA-		Legal Fees								
		Court Reporter/ Transcript								
		Subpoena Fees								
		LEA Personnel Time								
		Secretarial Time								
		Paper Processing								
		Consultants								
		Independent Evaluation								

APPENDIX V

INDEPENDENT EVALUATION
(SPEECH/LANGUAGE EVALUATORS)
SAMPLE LETTER

Appendix V-1

Dear Colleague:

The Exceptional Student Education Department of the (County Name) County School System is compiling a list of independent evaluators as part of our efforts to comply with Public Law 94-142 which states:

> "Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained." (121a.503FR)

Evaluation specialists need to:

1) provide in-depth speech and language evaluations and
2) identify areas of strengths and weaknesses.

The independent evaluation specialist must:

1) be registered to practice speech/language pathology in the state of Florida,
2) not be employed by the County School Board,
3) be able to provide written reports of evaluations,
4) be able to testify in mediation sessions, and
5) be able to testify at due process hearings.

If you are interested in being included on this list please send the following information:

1) a letter stating available assessment services,
2) a copy of your teaching certificate or
3) a statement by your administrator that only certified staff would provide evaluation services.

Please share this letter with other qualified colleagues who may wish to be included as independent evaluators. For more information contact ________ ____________, at ______________________________.

Sincerely,

This letter is specifically
to Speech/Language Evaluators.

INDEPENDENT EVALUATIONS
(EDUCATIONAL EVALUATORS)
SAMPLE LETTER

Dear Colleague:

The Exceptional Student Education Department of the (County Name) County School System is compiling a list of independent evaluators as part of our efforts to comply with Public Law 94-142 which states:

> "Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained." (131a.503FR)

Educational evaluators need to:

1) be able to assess students in major academic areas and/or
2) be qualified to administer process tests as part of a specific learning disabilities assessment.

Independent *educational* evaluators must:

1) have a current Florida teaching certificate,
2) not be employed by the County School Board,
3) be able to provide written reports of evaluations,
4) be able to participate in mediation sessions, and
5) be able to testify at due process hearings.

If you are interested in being included on this list please send the following information:

1) a letter stating available assessment services
2) a copy of your teaching certificate or
3) a statement by your administrator that only certified staff would provide evaluation services.

Please share this letter with other qualified colleagues who may wish to be included as independent evaluators. For more information contact ________ ______________, at ______________________________.

Sincerely,

This letter is specifically to Educational Evaluators.

State of Florida
Department of Education
Tallahassee, Florida
Ralph D. Turlington, Commissioner
Affirmative action/equal
opportunity employer

This reprint of a public document was promulgated at an annual cost of $7,530.20 or $3.77 per copy to provide information to school district personnel who are responsible for developing due process procedures to parents of handicapped students.

FLORIDA: A STATE OF EDUCATIONAL DISTINCTION. "On a statewide average, educational achievement in the State of Florida will equal that of the upper quartile of states within five years, as indicated by commonly accepted criteria of attainment." **Adopted, State Board of Education, Jan. 20, 1981**